Supre rt, U.S.
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No. 05-

IN THE

Supreme Court of the United States

MOHAWK INDUSTRIES, INC.,

Petitioner,

v.

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, AND LORA SISSON, individually and on behalf of a class,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

CARTER G. PHILLIPS*
JUAN P. MORILLO
STEVEN T. COTTREAU
JULIE A. GURLEY
MATTHEW J. WARREN
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K STREET, NW
WASHINGTON, DC 20005
(202) 736-8000

Counsel for Petitioner

* Counsel of Record

October 7, 2005

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

1. Whether a defendant corporation and its agents can constitute an "enterprise" under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), in light of the settled rule that a RICO defendant must "conduct" or "participate in" the affairs of some larger enterprise and not just its own affairs.

2. Whether plaintiffs state proximately caused injuries to business or property by alleging that the hourly wages they voluntarily accepted were too low.

STATEMENT REQUIRED BY RULE 14.1

Pursuant to Supreme Court Rule 14.1, petitioner states that all parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption above.

STATEMENT REQUIRED BY RULE 29.6

Pursuant to Supreme Court Rule 29.6, petitioner Mohawk Industries, Inc. states that there is no parent corporation or publicly held corporation that owns 10% or more of Mohawk Industries, Inc.'s stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mohawk Industries, Inc. ("Mohawk") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the district court denying in part and granting in part petitioner's motion to dismiss was reported at 314 F. Supp. 2d 1333 (N.D. Ga. 2004) and is reproduced in the appendix (Pet. App.) at 24a-61a. The order of the district court certifying the case for interlocutory appeal was unpublished and is reproduced in the appendix at Pet. App. 68a-72a. The order of the Eleventh Circuit granting Mohawk's petition for interlocutory appeal was unpublished and is reproduced in the appendix at Pet. App. 67a. The opinion of the court of appeals affirming in part and reversing in part the district court's order was published at 411 F.3d 1252 (11th Cir. 2005) and is reproduced at Pet. App. 1a-23a. The order of the court of appeals denying rehearing en banc was unpublished and is reproduced at Pet. App. 73a. The order of the district court staying discovery pending this Court's review was unpublished and is reproduced in the appendix at Pet. App. 62a-66a.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 2005. An order denying petitioner's petition for rehearing en banc was entered on August 8, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 1961(4) of Title 18 to the United States Code provides that:

> [As used in this chapter,] "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity . . . .

Section 1962(c) of Title 18 to the United States Code provides that:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Section 1964(c) of Title 18 to the United States Code provides that:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

STATEMENT OF THE CASE

This petition arises out of a suit by a putative class of current and former hourly employees of Mohawk who allege that Mohawk hired illegal immigrants and thereby suppressed the wages that plaintiffs were offered and voluntarily accepted. The Eleventh Circuit's decision, which permits this theory of liability under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO") to proceed, concededly conflicts with those of other circuits and presents two significant questions concerning the statute.

The first question is whether a defendant corporation can conduct or participate in the affairs of a distinct RICO "enterprise" under 18 U.S.C. § 1962(c) where the only members of the putative "enterprise" are the corporation and its agents. The Eleventh Circuit's affirmative answer to this question exacerbated a sharp split in the courts of appeals (now two to three) on whether a corporate defendant and its agents can constitute a RICO enterprise. The Eleventh Circuit candidly acknowledged that its decision "puts our circuit in conflict" with the Seventh Circuit's construction of the enterprise requirement in a materially indistinguishable case. Pet. App. 9a. Indeed, the Eleventh Circuit's decision also conflicts with the holdings of the Second and Third Circuits, while being in accord with that of the Sixth.

The Eleventh Circuit's ruling impermissibly relaxes the limitations Congress placed on the imposition of RICO's harsh penalties. Section 1962(c)'s requirement that a defendant participate in the operation or management of an "enterprise" that is different from the defendant alone is a "critical limitation" on RICO that prevents it from becoming a routine vehicle for imposing civil liability. *Reves* v. *Ernst & Young*, 507 U.S. 170, 183 (1993). Corporations are artificial entities that function only through agents working on their behalf. Yet, the Eleventh Circuit held that a corporation may be a RICO defendant whenever it uses such persons to

perform a corporate function (as all corporations must). Under the Eleventh Circuit's reading of the statute, the requirements that there be a RICO "enterprise" separate from the RICO defendant and that the defendant conduct the *enterprise's* affairs, not merely its own, are no limitations at all when a corporation is a RICO defendant.

The second question meriting this Court's review is whether plaintiffs have properly alleged proximately caused harm to their "business or property," as required under 18 U.S.C. § 1964(c). Plaintiffs allege that they voluntarily accepted the assertedly depressed wages. The Eleventh Circuit's acceptance of plaintiffs' alleged injury to their "business or property" fails to recognize these terms as "words of limitation" on the scope of civil RICO actions. *Doe* v. *Roe*, 958 F.2d 763, 767 (7th Cir. 1992). The Eleventh Circuit's improper expansion of RICO to permit plaintiffs to sue for a retroactive wage increase from voluntarily agreed upon wages is also in direct tension with decisions of both the Fifth Circuit and the D.C. Circuit.

Furthermore, the Eleventh Circuit's conclusion that plaintiffs need not plead the predicate facts to establish proximately caused injury is in conflict with this Court's opinion of last term *Dura Pharmaceuticals, Inc.* v. *Broudo*, 125 S. Ct. 1627, 1634 (2005). In that case, this Court held that conclusory allegations of proximate cause were insufficient and that plaintiffs must separately allege facts establishing the causal steps in their theory of injury. *Id.* Furthermore, plaintiffs' conclusory allegations demonstrated no direct injury, in contravention of this Court's opinion in *Holmes* v. *Securities Investor Protection Corp.*, 503 U.S. 258 (1992), which forbids those with attenuated injuries from recovering under RICO.

The Eleventh Circuit's decision to permit plaintiffs to proceed despite these manifest defects in their complaint warrants this Court's attention. The circuit court's construction of RICO's enterprise requirement—if left

intact—will transform routine corporate conduct into conduct actionable under RICO. Moreover, the circuit court's dramatic relaxation of the requirement that plaintiffs plead a proximately caused injury to their business or property transforms the RICO private right of action from a narrowly drawn remedy, focused on providing redress to the direct victims of crime, into a device that uses *in terrorem* remedies to extort windfall recoveries for parties with self-professed "injuries."

1. On January 6, 2004, the respondents filed a complaint in the United States District Court for the Northern District of Georgia on behalf of a purported class of current and former hourly employees of petitioner Mohawk. Pet. App. 24a-25a; Compl. Mohawk was the only named defendant. Mohawk (and its subsidiaries) is a leading manufacturer of carpet, rugs, tile, and other floor coverings. Plaintiffs asserted a federal RICO claim under 18 U.S.C. § 1962(c), two claims under Georgia's RICO statute (Ga. Code Ann. § 16-14-4), and a claim for unjust enrichment. All of these claims stemmed from plaintiffs' allegation that Mohawk had knowingly employed illegal aliens and that this employment of illegal workers somehow depressed wages for all of Mohawk's legal hourly workers throughout the State of Georgia.[1] See Pet. App. 25a-28a; Compl. ¶¶ 14-31.[2]

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[1] While the allegations in the Complaint must be taken as true at this stage, Fed. R. Civ. Proc. 12(b)(6), Mohawk vigorously denies any illegal conduct.

[2] The Complaint set forth five alleged RICO predicate acts: (1) knowingly hiring more than 10 illegal aliens during a 12-month period, in violation of 8 U.S.C. § 1324(a)(3)(A); (2) harboring illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii); (3) encouraging illegal aliens to enter the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv); (4) accepting false identification documents, in violation of 18 U.S.C. § 1546(a); and (5) using false identification documents, in violation of 18 U.S.C. § 1546(b). *See* 18 U.S.C. § 1961(1)(B), (F) (providing that violations of 8 U.S.C. § 1324 and 18 U.S.C. § 1546 constitute "racketeering activity" for RICO purposes).

Plaintiffs' allegations almost exclusively focused upon Mohawk and its employees—not on an alleged RICO enterprise. Specifically, plaintiffs alleged: "Mohawk has accepted for employment . . . workers that it knew or had reason to know were not authorized to work in the United States"; "Mohawk has knowingly and recklessly accepted" obviously false documentation for employees; "Mohawk supervisors have encouraged . . . employees to . . . [illegally] reapply for work at Mohawk"; "Mohawk employees and/or supervisors have destroyed eligibility documents" to conceal Mohawk's employment of illegal workers; "Mohawk employees have traveled to the United States border . . . to recruit undocumented aliens"; and that "Mohawk employees and supervisors have assisted illegal workers in attempting to evade detection by law enforcement." Compl. ¶¶ 15-18, 20, 22, 28; see Pet. App. 25a-27a.

In an attempt to satisfy § 1962(c)'s requirement that the defendant conduct the affairs of an "enterprise" (and not just its own affairs), plaintiffs alleged in their complaint that Mohawk had participated in "an association-in-fact enterprise with third party employment agencies and other recruiters." Compl. ¶ 76; Pet. App. 45a. In particular, plaintiffs alleged that these third-party recruiters supplied illegal workers to Mohawk and that Mohawk paid the recruiters a fee for each worker they supplied. See Compl. ¶ 76; Pet. App. 45a. Plaintiffs asserted without explanation that Mohawk participated in the operation and management of the affairs of this "enterprise," and claimed that the "common purpose" of the enterprise was to "obtai[n] illegal workers for employment by Mohawk." Compl. ¶¶ 77, 78. Plaintiffs further asserted that the enterprise "exists for Mohawk's benefit." *Id.* ¶ 78. Plaintiffs did not name any participants in this supposed "enterprise" other than Mohawk and its employment recruiters.

Plaintiffs also asserted that they had standing to sue under RICO for a retroactive wage increase because Mohawk's

hiring of illegal workers had depressed plaintiffs' wages and thereby "injured [their] business or property." Compl. ¶¶ 85-87; 18 U.S.C. § 1964(c). Plaintiffs' only support for this claim was a conclusory assertion that Mohawk's knowing employment of illegal workers had "substantially and unlawfully increased the supply of workers" and that this "unlawful expansion of the labor pool" allowed Mohawk to depress the wages it paid to other hourly employees throughout the State of Georgia. Compl. ¶ 35. The complaint offered no explanation for how Mohawk could pay below-market wages and retain its workforce, nor did it claim that Mohawk had sufficient market power to depress wages throughout Georgia. Instead, plaintiffs merely alleged generally that Mohawk's employment of "hundreds" of illegal aliens somehow depressed the wages of the millions of workers in Georgia. *Id.* ¶ 61.

2. Mohawk moved to dismiss all four counts of the complaint, arguing *inter alia* that respondents had failed to plead a sufficient RICO enterprise and that they had not adequately pled proximate cause (a requirement for both federal and Georgia RICO, see 18 U.S.C. § 1964(c); Ga. Code Ann. § 16-14-6(c)). The district court denied Mohawk's motion to dismiss the federal and Georgia RICO claims.[3] Pet. App. 61a. The district court, however, granted Mohawk's motion to certify an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) and stayed discovery pending resolution of the appeal. *Id.* at 72a. The court found that there was "substantial ground for difference of opinion" both as to whether plaintiffs had pled an adequate RICO enterprise and as to whether they had pled sufficient proximate cause, and concluded that each question merited immediate review. *Id.* at 70a. Indeed, the court noted that its opinion conflicted

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[3] The district court partially granted Mohawk's motion to dismiss the unjust enrichment claim, dismissing plaintiffs' claim for unjust enrichment based on Mohawk's supposed benefit from workers' compensation savings. Pet. App. 61a.

with the Seventh Circuit's opinion in *Baker* v. *IBP, Inc.*, 357 F.3d 685 (7th Cir.), *cert. denied*, 125 S. Ct. 412 (2004). See Pet. App. 70a. The Eleventh Circuit then granted Mohawk's petition to appeal. *Id.* at 67a.

3. The Eleventh Circuit affirmed the district court's denial of Mohawk's motion to dismiss the federal and Georgia RICO claims.[4] Pet. App. 23a. The Eleventh Circuit held that a plaintiff could survive a motion to dismiss by alleging an "enterprise" that consisted of any "loose or informal association of distinct entities." *Id.* at 7a (internal quotation marks omitted). Because Mohawk and the third-party recruiters allegedly were "distinct entities . . . engaged in a conspiracy to bring illegal workers into the country for Mohawk's benefit," the Eleventh Circuit concluded that they constituted a RICO enterprise. *Id.* at 7a-8a. The court further held that the alleged enterprise had a "common purpose" because all the participants stood to gain financial benefits, and that the plaintiffs' general allegation that "Mohawk participates in the operation and management of the affairs of the enterprise" was sufficient to plead operation or management. *Id.* at 8a (internal quotation marks omitted).

The Eleventh Circuit expressly acknowledged that its enterprise holding "puts our circuit in conflict with the Seventh Circuit's decision in *Baker v. IBP, Inc.*" Pet. App. 9a. The *Baker* plaintiffs made allegations materially identical to the allegations made by respondents—that a defendant corporation was violating immigration laws by employing illegal aliens—and, like plaintiffs here, claimed that the RICO enterprise consisted of the defendant corporation and third parties that provided it with employees. See *Baker*, 357 F.3d at 686-87; *infra* at note 16. In an opinion for the court,

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[4] The Eleventh Circuit reversed the district court's judgment on the unjust enrichment claims in part, holding that plaintiffs' unjust enrichment claim should have been dismissed in its entirety because plaintiffs contracted for the wages they received. Pet. App. 23a.

written by Judge Easterbrook, the Seventh Circuit held that the *Baker* plaintiffs had failed to allege that IBP was operating or managing a separate enterprise (as opposed to "operat[ing] *itself* unlawfully"). See *Baker*, 357 F.3d at 691. The Eleventh Circuit rejected the Seventh Circuit's analysis, claiming that it was "possible" for plaintiffs to establish that Mohawk operated or managed the supposed "enterprise" of Mohawk and its recruiters. Pet. App. 11a. The Eleventh Circuit did not explain how this could be "possible" or how Mohawk's hiring of its own employees constituted the operation or management of the affairs of a distinct enterprise—as opposed to Mohawk's own affairs. The Eleventh Circuit also noted that it disagreed with the Seventh Circuit on the need for all the participants in the enterprise to have the same "common purpose," reasoning that "the 'common purpose' of the enterprise [need not] be the sole purpose of each and every member of the enterprise." *Id.* at 10a.[5]

The Eleventh Circuit also concluded that plaintiffs' allegedly depressed wages was a "business" injury that was adequate for RICO standing. Pet. App. 11a-12a. Relying on

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[5] In holding that plaintiffs had alleged an enterprise, the Eleventh Circuit purported to rely on three circuit court cases that it claimed had approved "similar" allegations. Pet. App. 9a (citing *Trollinger* v. *Tyson Foods, Inc.*, 370 F.3d 602 (6th Cir. 2004), *Mendoza* v. *Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002), and *Commercial Cleaning Servs., LLC* v. *Colin Serv. Sys., Inc.*, 271 F.3d 374 (2d Cir. 2001)). But none of these cases held that an association between a corporation and those acting on its behalf could satisfy § 1962(c)'s enterprise requirement. Neither *Commercial Cleaning Services* nor *Trollinger* even addressed the enterprise requirement. *See Trollinger*, 370 F.3d at 622 ("[W]e do not express an opinion as to whether plaintiffs can show that Tyson and its co-conspirators constituted an 'enterprise'"); *see Commercial Cleaning Servs.*, 271 F.3d at 380-85. *Mendoza* addressed an entirely different alleged enterprise, one involving multiple defendant corporations that, in concert, conspired to use an employment agency as a "front company" to shield the defendants from liability for employing illegal workers. 301 F.3d at 1167 (internal quotation marks omitted).

the Ninth Circuit's analysis in *Mendoza*, the Eleventh Circuit held that plaintiffs' alleged "'legal entitlement to business relations unhampered by [the alleged RICO predicate acts]'" was a business interest that gave the plaintiffs standing under § 1964(c). *Id.* at 12a (quoting *Mendoza*, 301 F.3d at 1168 n.4). The court further held that the plaintiffs' alleged injury was sufficiently "direct" to give them standing to sue under RICO and that plaintiffs' conclusory allegations that Mohawk's hiring of illegal workers had increased the labor supply and depressed wages were "all that is needed" to state proximate cause. *Id.* at 14a.

Mohawk filed a petition for rehearing en banc, which was denied. Pet. App. 73a. The district court has stayed all proceedings pending this Court's review. See *id.* at 65a (noting that this Court "very well may choose to grant certiorari" in light of the "substantial ground for difference of opinion" as to both the RICO enterprise issue and the proximate cause issue).

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE THE CIRCUIT SPLIT ON WHETHER A DEFENDANT CORPORATION AND ITS AGENTS ACTING ON ITS BEHALF CAN TOGETHER CONSTITUTE A DISTINCT RICO ENTERPRISE.

This case presents the question whether a corporate defendant can conduct or participate in the affairs of a RICO "enterprise" comprised solely of the corporation and its agents performing corporate tasks for it. See 18 U.S.C. § 1962(c). The Eleventh Circuit's affirmative answer to this question parallels the holding of the Sixth Circuit. These decisions, however, are in fundamental conflict with the conclusions of the Second, Third, and Seventh Circuits. Indeed, the Eleventh Circuit itself acknowledged that its decision that a manufacturer and its employment recruiters

could comprise an enterprise "puts our circuit in conflict" with the Seventh Circuit's construction of the enterprise requirement in a materially identical case. Pet. App. 9a. That is reason enough for this Court to grant certiorari.

Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). The statute contemplates "two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name." *Cedric Kushner Promotions, Ltd.* v. *King*, 533 U.S. 158, 161 (2001). Plaintiffs proceeding under § 1962(c), therefore, must plead and prove an enterprise that is distinct from the defendant. See *id.* at 161-62 ("distinctness" requirement is "legally sound and workable" (citation and internal quotation marks omitted)); see also *United States* v. *Turkette*, 452 U.S. 576, 583 (1981) (existence of an enterprise is a separate element of a RICO offense). Relatedly, plaintiffs must show that a defendant "conducted or participated in the conduct of the '*enterprise's* affairs,' not just [its] *own* affairs." *Reves* v. *Ernst & Young*, 507 U.S. 170, 185 (1993).

This Court has previously taken note of this question presented in a different context, but has not had occasion to answer it. In *Kushner*, an individual who was president and sole shareholder of a closely held corporation was accused of conducting the affairs of that corporation (the alleged RICO "enterprise") through a pattern of racketeering. See 533 U.S. at 160. The Second Circuit had held that the individual defendant was not "distinct" from this enterprise because he was an employee of the corporation who was acting within the scope of his authority. See *id.* at 161. This Court reversed, finding that the defendant, as an individual, was distinct from the corporation he controlled. See *id.* at 163. Indeed, *Kushner* presented a classic RICO fact pattern—an

individual defendant using an organization (the RICO enterprise) for criminal purposes.

This Court noted that the case presented no need to examine the converse fact pattern, *i.e.*, a *corporate* defendant with a purported "enterprise" comprised of itself and its employees and agents. *Id.* at 164. This Court did, however, call such an "enterprise" an "oddly constructed entity" and noted it would present "quite different circumstances" than the enterprise in *Kushner*. *Id.* This case presents the "oddly constructed entity" noted by the *Kushner* Court.

Grappling with this issue, the courts of appeals generally have recognized that a defendant corporation cannot associate with its divisions or subsidiaries to create a distinct enterprise.[6] Similarly, a defendant corporation's association with its own employees does not form an enterprise distinct from the corporation itself.[7] The circuits are divided, however, on whether a distinct RICO enterprise can consist solely of the corporation and non-employee agents performing corporate functions.

The Second, Third, and Seventh Circuits have held that because a corporation necessarily acts through agents, an "enterprise" consisting of a defendant corporation and agents acting on its behalf cannot be meaningfully distinguished from the corporation itself. The Eleventh Circuit in the decision below and the Sixth Circuit have disagreed, however, concluding that an enterprise can be pled adequately so long as the corporation and the agents in the alleged "enterprise" are "distinct entities," even if those agents are merely performing services for the corporation.

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[6] *See, e.g.*, *Brannon* v. *Boatmen's First Nat'l Bank of Okla.*, 153 F.3d 1144, 1148-49 (10th Cir. 1998); *Lorenz* v. *CSX Corp.*, 1 F.3d 1406, 1413 (3d Cir. 1993).

[7] *See, e.g.*, *Riverwoods Chappaqua Corp.* v. *Marine Midland Bank, N.A.*, 30 F.3d 339, 344 (2d Cir. 1994); *Old Time Enters., Inc.* v. *International Coffee Corp.*, 862 F.2d 1213, 1217 (5th Cir. 1989).

The "distinct entity" test used by the Eleventh Circuit in the instant case, see *supra* at 8, mirrors the Sixth Circuit's test in *Davis* v. *Mutual Life Insurance Co. of New York*, 6 F.3d 367, 377 (6th Cir. 1993). In *Davis* the plaintiffs brought a RICO claim against the defendant insurance company ("MONY"). Plaintiffs alleged that they were damaged by the fraudulent conduct of Fletcher Insurance Associates ("FIA"), an insurance agency that sold MONY policies. They claimed that FIA was an "enterprise" that MONY operated or managed within the meaning of § 1962(c). See *id.* at 376-77. After a jury verdict for the plaintiffs, MONY appealed, arguing *inter alia* that it was not liable under § 1962(c) because the FIA "enterprise" was insufficiently distinct from MONY. See *id.* at 372, 377. The Sixth Circuit agreed that FIA's employees operated as "sales agents for MONY." *Id.* at 377. Nevertheless, the Sixth Circuit found that FIA was a distinct enterprise from MONY because FIA was a "distinct entity" from MONY with an independent corporate existence. *Id.* ("FIA had its own board of directors, its own business cards, and its own office stationary.").

The Second, Third, and Seventh Circuits have disagreed with this view, holding that a corporation and third parties performing corporate tasks on its behalf cannot constitute an enterprise distinct from the corporation itself. See *Baker* v. *IBP, Inc.*, 357 F.3d 685, 691-92 (7th Cir.), *cert. denied*, 125 S. Ct. 412 (2004); *Fitzgerald* v. *Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997); *Discon, Inc.* v. *NYNEX Corp.*, 93 F.3d 1055, 1064 (2d Cir. 1996), *vacated on other grounds*, 525 U.S. 128 (1998); *Brittingham* v. *Mobil Corp.*, 943 F.2d 297, 303 (3d Cir. 1991). These Circuits have based their conclusions on two related rationales. First, such an "enterprise" is not distinct from the corporation itself. Because a corporation can act only through agents, an "enterprise" of a defendant and entities acting on its behalf "is in reality no more than the defendant itself." *Riverwoods Chappaqua Corp.* v. *Marine Midland Bank, N.A.*, 30 F.3d 339, 344 (2d

Cir. 1994); see *Fitzgerald*, 116 F.3d at 228 (Posner, C.J.); *Discon*, 93 F.3d at 1064; *Brittingham*, 943 F.2d at 303. Second, a corporation accused of conducting an "enterprise" that consists of the corporation and third parties performing corporate functions is not conducting or participating in the conduct of the affairs of some separate enterprise—it is conducting *the corporation's own* affairs. See *Baker*, 357 F.3d at 691-92.

In a case presenting allegations nearly identical to those made by respondents here, the Seventh Circuit held that such allegations failed to establish an enterprise distinct from the corporation. See *Baker*, 357 F.3d at 692; compare Pet. App. 9a (recognizing that enterprise holding "puts our circuit in conflict with the Seventh Circuit's decision in *Baker v. IBP, Inc.*"). The *Baker* plaintiffs were putative representatives of a class of employees at a meat-processing plant owned by the defendant, IBP. See 357 F.3d at 686. The plaintiffs brought a claim under § 1964(c), alleging that IBP knowingly employed large numbers of illegal aliens, ignored fraudulent documentation, and helped unauthorized employees to avoid detection by immigration authorities. See *id.* at 686-87. The plaintiffs further alleged that IBP paid "recruiters" who provided it with illegal alien employees and that IBP had "arrangements" with certain immigrant welfare organizations who referred known illegal aliens to IBP. *Id.* at 687. The plaintiffs claimed that IBP's employment of illegal aliens had depressed their wages. See *id.*

The plaintiffs alleged that the RICO enterprise was "IBP plus the persons and organizations who help it find aliens to hire." *Id.* at 691. The *Baker* court held that this allegation failed to specify a distinct enterprise. The court noted that an allegation that "IBP plus its agents and employees" constituted an enterprise was a "theory that won't fly," because such an "association" would be nothing more than the corporation itself. *Id.* Moreover, the court held that IBP had not operated or managed any separate enterprise; rather,

"[t]he nub of the complaint is that IBP operates *itself* unlawfully—it is IBP that supposedly hires, harbors, and pays the unlawful workers." *Id.* Because the supposed enterprise was not distinct from IBP itself, the Seventh Circuit concluded that plaintiffs had not alleged a RICO violation. See *id.* at 692.

Similarly, in *Fitzgerald* the Seventh Circuit found that the defendant Chrysler's association with its "affiliates and agents" was not a separate enterprise. 116 F.3d at 226 (Posner, C.J.). The *Fitzgerald* plaintiffs alleged that Chrysler had engaged in a scheme fraudulently to deny warranty protection to consumers, and that it carried out this scheme through an "association-in-fact" enterprise with Chrysler dealerships. See *id.* The Seventh Circuit held that this supposed enterprise was not distinct from Chrysler itself. See *id.* at 228. The court noted that this alleged enterprise was far afield from the prototypical RICO enterprise, and it recognized the illogic in applying RICO liability to a corporation using outside agents when no liability would attach for the corporation's use of its own employees in the same way. See *id.* at 227. "[W]e cannot imagine . . . applying RICO to a free-standing corporation such as Chrysler merely because Chrysler does business through agents, as virtually every manufacturer does." *Id.*

The Second and Third Circuits have reached similar conclusions. In *Riverwoods*, the Second Circuit held that "a RICO enterprise that consists merely of a corporate defendant associated with its own employees or agents carrying on the regular affairs of a defendant" is not distinct from the corporate defendant. 30 F.3d at 344. While *Riverwoods* applied that rule in the context of an alleged enterprise constituting the corporation and its own employees, see *id.* at 344-45, the Second Circuit later followed the same rule to hold in *Discon* that a corporation and third parties working on its behalf could not form an enterprise. In *Discon*, the plaintiffs alleged that the enterprise consisted of several

entities within a single corporate structure and their "attorneys, accountants and other agents." 93 F.3d at 1064 (internal quotation marks omitted). The Second Circuit concluded that this enterprise was indistinguishable from the corporation itself; neither a corporation's "agents" nor its "employees" were distinct from the corporation "so long as those persons act on behalf of the corporation." *Id.*[8]

The Third Circuit likewise has held that an "enterprise" consisting of a defendant corporation and advertising agencies acting on its behalf is not distinct from the corporation itself. See *Brittingham*, 943 F.2d at 302. In *Brittingham* the court explained that a corporate defendant is differently situated from an individual defendant accused of manipulating his corporate employer; "when a defendant is itself a collective entity, it is more likely that the alleged enterprise is in reality no different from the association of individuals or entities that constitute the defendant or carry out its actions." *Id.* at 302.[9]

The stark conflict between the decisions of the Sixth and Eleventh Circuits and those of the Second, Third, and Seventh Circuits on whether a corporation and outside entities performing its corporate functions can together form a RICO enterprise is an issue of national importance that warrants this Court's review. The mechanical "distinct entity" test applied by the Sixth and Eleventh Circuits would effect a drastic and unwarranted expansion of RICO liability into an area far

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[8] This Court's decision in *NYNEX Corp.* v. *Discon, Inc.*, 525 U.S. 128 (1998), reversed the Second Circuit's decision only as to the plaintiffs' Sherman Act claims; this Court did not review the Second Circuit's decision on the RICO claims. *Id.* at 133.

[9] The Third Circuit later overruled a different portion of *Brittingham*, that addressing application of § 1962(c) to "officers and employees acting through a corporate enterprise," *see Jaguar Cars, Inc.* v. *Royal Oak Motor Car Co.*, 46 F.3d 258, 266, 268-69 (3d Cir. 1995). Jaguar did not alter *Brittingham*'s holding that a defendant corporation and its third-party agents could not constitute a RICO enterprise. *See id.* at 268.

afield from the initial purpose of the statute. While it is true that RICO has been applied in circumstances different from its initial purpose "to attack the 'infiltration of organized crime and racketeering into legitimate organizations,'" *Reves*, 507 U.S. at 185 (quoting S. Rep. No. 91-617, at 76 (1969)), RICO was clearly not designed as a general civil liability remedy with treble damages against corporations. On the contrary, the requirements of § 1964, including the enterprise requirement, are "critical limitation[s]" on the applicability of RICO. *Id.* at 183.

The Eleventh Circuit's "distinct entity" rule all but eliminates the enterprise requirement for the vast majority of corporate defendants, because it allows plaintiffs to plead an "enterprise" in any case by alleging the involvement of a third party corporate agent. Yet every corporation must act through agents to carry out business—companies hire advertisers to prepare advertising campaigns, insurance companies use agents to sell policies, and manufacturers use employment agencies to find workers. Under the Eleventh Circuit's rule, each of these corporations could be held liable under RICO simply because it hired an outside company to perform these tasks, rather than using its own employees. The rule would, in effect, make a broad range of routine corporate conduct actionable under RICO. This dramatic increase of corporate RICO liability based on nothing more than the vagaries of its corporate organization is unwarranted "and makes little sense from a policy perspective." *Brannon* v. *Boatman's First Nat'l Bank of Okla.*, 153 F.3d 1144, 1147 (10th Cir. 1998). As Judge Posner observed, recognizing the sort of "enterprise" that the Eleventh Circuit accepted would create an incentive for corporations to insulate themselves from RICO liability by vertically integrating functions that would otherwise be outsourced to other companies. See *Fitzgerald*, 116 F.3d at 227. RICO was certainly not intended to encourage corporate consolidation or any particular

business structure.[10] Accordingly, this dramatic expansion of RICO liability warrants review.

II. THIS COURT SHOULD GRANT CERTIORARI TO ADDRESS THE REQUIREMENT THAT RICO PLAINTIFFS ADEQUATELY PLEAD A PROXIMATELY CAUSED INJURY TO BUSINESS OR PROPERTY.

This case presents a second significant question for this Court's review—what a plaintiff must plead to establish standing to bring a civil RICO action. The Eleventh Circuit held that plaintiffs' conclusory allegations that Mohawk's employment of "hundreds" of illegal aliens somehow depressed hourly wages throughout Georgia were sufficient to establish proximately caused harm to plaintiffs' "business or property." Pet. App. 14a. The Eleventh Circuit's acceptance of these conclusory allegations of direct injury to "business or property" runs contrary to decisions in other Circuits and is sharply out of step with this Court's own interpretation of RICO standing.

Civil RICO actions may only be brought by "person[s] injured in [their] business or property by reason of a violation of [18 U.S.C. § 1962]." 18 U.S.C. § 1964(c). Section 1964(c) embodies two substantive limitations on the types of plaintiffs who may recover civil RICO damages. First, putative plaintiffs must have suffered an injury to their "business or property." Second, the "by reason of" language of § 1964(c) limits standing to those plaintiffs who can demonstrate that a RICO violation was the proximate cause of

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[10] Moreover, the disagreement among the courts of appeals on this question presents a significant risk of forum shopping. Corporations targeted by civil RICO actions often do business in several states, and this circuit split means that the same corporation would be subject to different liability in different states. While an "enterprise" consisting of a corporation and its agents would not be sufficient in Illinois or New York, such an enterprise would be sufficient in Ohio or Florida.

their injury. See *Holmes* v. *Securities Investor Prot. Corp.*, 503 U.S. 258, 267-68 (1992). Together these two requirements reflect Congress's determination to limit the class of civil plaintiffs who are permitted to sue under RICO. See *id.* at 274.

Here, plaintiffs allege that they suffered an injury to their "business or property" because wages that they freely agreed to accept were suppressed. Although recognizing that the statutory terms "business or property" are "words of limitation" that require plaintiffs to allege a concrete financial loss, the Eleventh Circuit found plaintiffs' allegations a sufficiently concrete business injury for § 1964(c) standing. Pet. App. 11a-12a (internal quotation marks omitted). Specifically, the Eleventh Circuit concluded that an employee working for an agreed-upon (but allegedly depressed) wage nevertheless has § 1964(c) standing. The court reasoned that the employee had a "'legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes.'" *Id.* at 12a (quoting *Mendoza*, 301 F.3d at 1168 n.4).[11]

The Eleventh Circuit's opinion exacerbates the confusion amongst the circuits as to the types of injury that can constitute an injury to "business or property." Significantly, the Fifth Circuit has recognized that plaintiffs who receive "precisely what they bargained for" do not suffer an injury to their business or property under RICO. *Price* v. *Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998) (per curiam). The *Price* plaintiffs claimed an injury from their purchase of

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[11] The Eleventh Circuit reasoned that its conclusion was supported by the Ninth Circuit's opinion in *Mendoza* v. *Zirkle Fruit Co.*, 301 F.3d 1163, 1171 (9th Cir. 2002), but that case included a critical allegation absent here: an allegation that defendants had "the ability to define wages in [the] labor market, akin to monopsony or oligopsony power." *Id.* These allegations of the defendants' "singula[r]" market power to "affect wages throughout the labor market" were dispositive in the Ninth Circuit's analysis. *Id.* at 1166-67. In the instant case, plaintiffs have not alleged that Mohawk had the power to define wages throughout Georgia.

trading cards that were allegedly marketed in violation of the gambling laws. See *id.* at 605. The court held that the plaintiffs had not suffered an injury to their business or property, because they did "'not allege that they received something different than precisely what they bargained for: six to twenty cards in a pack with a chance that one of those cards may be [a valuable collectible card].'" *Id.* at 607. It was irrelevant that the plaintiffs may have had a state law property interest to recover gambling losses, because such an "'intangible property interest' is not sufficient to confer RICO standing." *Id.*

The Eleventh Circuit's expansive interpretation of the "business or property" requirement is also contrary to the D.C. Circuit's decision in *Danielson* v. *Burnside-Ott Aviation Training Center, Inc.*, 941 F.2d 1220, 1229 (D.C. Cir. 1991). The *Danielson* plaintiffs alleged that their employers had violated RICO by paying wages below the levels required by the Service Contract Act. See *id.* at 1226. The D.C. Circuit questioned whether plaintiffs who had voluntarily accepted supposedly insufficient wages could suffer an injury to their "business or property." *Id.* at 1229. Even though the plaintiffs might have been "entitled to higher paying job classifications," the D.C. Circuit noted that "each employee in fact received precisely the compensation bargained for in return for the agreed work." *Id.*

The Eleventh Circuit's decision that plaintiffs could satisfy § 1964(c) by alleging an intangible "business interest" in the employment relationship with their employer that was unhampered by alleged RICO violations runs contrary to *Danielson* and *Price* and constitutes an unwarranted evisceration of the "business or property" limit on RICO standing. The blunt instrument of treble-damages civil RICO liability was never intended to be available for every plaintiff who claimed damage from an alleged RICO violation. Rather, Congress made a substantive judgment to permit civil RICO suits only by plaintiffs who had particular types of

damage—an injury to their "business" or to their "property." By permitting plaintiffs who voluntarily accepted an hourly wage to sue for an inflated retroactive pay raise, the Eleventh Circuit effectively has read the "business or property" limitation out of the statute.[12]

Indeed, the acceptance of these nebulous injuries undermines the requirement that a plaintiff must allege "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268. The Eleventh Circuit's opinion sharply undercuts *Holmes*' direct injury requirement, finding injury based on plaintiff's allegations that Mohawk illegally hired *other* employees. See Pet. App. 18a. Yet the *direct* victims are either the illegally hired workers themselves or the legal employees *not* hired, and certainly not plaintiffs. *Holmes,* 503 U.S. at 271 (remedies for RICO harms should "'not . . . go beyond the first step.'"). The members of the former group are, by the plaintiffs' own allegations, those with diminished "bargaining power" who supposedly "are beholden to Mohawk" and have "no effective means to complain about the terms of their employment," and thus earn depressed wages. *Id.* ¶ 33, 36.[13]

The Eleventh Circuit placed talismanic reliance on plaintiffs' conclusory assertion that they had been injured "by direct and proximate reason of Mohawk's illegal conduct."

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[12] Indeed, plaintiffs throughout the country have filed at least four class actions under RICO seeking a retroactive pay raise. *See* Pet. App. 9a; *Trollinger*, 370 F.3d at 606-07; *Baker*, 357 F.3d at 686-87; *Mendoza*, 301 F.3d at 1166.

[13] In fact, undocumented immigrants have brought at least one RICO action against an employer for hiring them and allegedly violating labor laws because they are "unaware of their rights, afraid to complain, and thus easily exploited." *See* Revised First Am. Compl. at ¶ 3, *Zavala v. Wal-Mart Stores, Inc.*, No. 03-Civ.-5309 (D.N.J., filed Oct. 28, 2004); *see also* Sarah Paoletti & Matt Hayes, *Should illegal aliens be able to sue U.S. employers for labor racketeering?*, Insight on the News, Jan. 6, 2004, at 46.

Pet. App. 14a. This ready acceptance of plaintiffs' conclusions runs contrary to this Court's holding from last term in *Dura Pharmaceuticals, Inc.* v. *Broudo*, that a court may not simply rubber-stamp a general allegation of proximate cause. 125 S. Ct. 1627, 1634 (2005).[14] Instead, plaintiffs can only survive a motion to dismiss by pleading specific facts that illustrated a chain of "causal connection" linking the defendant's actions and their injury. See *id.*[15]

Similarly, in the present case, plaintiffs have pled, at best, only the first link in a chain of causation—that Mohawk was supposedly employing "hundreds" of illegal aliens. Plaintiffs leap from this allegation to the conclusion that the additional workers depressed wages throughout Georgia. But "this is far from inevitably so." *Id.* at 1632. Wages are affected by a "tangle of factors," *id.*, none of which is accounted for in plaintiffs' conclusory allegation of causation. And plaintiffs

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[14] The *Dura* plaintiffs pled that they were harmed by the purchase of stock at an inflated price. *See Dura*, 125 S. Ct. at 1630. This Court recognized that an inflated price "might" lead to a subsequent loss, but that it was "far from inevitably so." *Id.* at 1632 (emphasis omitted). Instead, price could be affected by a "tangle of factors" completely unrelated to the defendants' alleged wrongful conduct. *Id.*

[15] Indeed, this tension over pleading a proximately caused RICO injury exists within a larger division among the circuits regarding what a plaintiff must plead in order to survive a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Citing this Court's opinion in *Swierkiewicz* v. *Sorema, N.A.*, 534 U.S. 506 (2002), the Third and Ninth Circuits have held that a plaintiff need not plead facts to survive such a motion to dismiss. *See Alston* v. *Parker*, 363 F.3d 229, 233 n.6 (3d Cir. 2004); *Kwai Fun Wong* v. *United States*, 373 F.3d 952, 969-70 (9th Cir. 2004) (holding plaintiffs' conclusory allegations of "discriminatory animus" were sufficient to state a claim). Conversely, the Fourth Circuit concluded that *Swierkiewicz* did not "alter the basic pleading requirement that a plaintiff set forth facts sufficient to allege each element of his claim." *Dickson* v. *Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002) (citing *Iodice* v. *United States*, 289 F.3d 270, 281 (4th Cir. 2002)). The Eleventh Circuit's opinion also provides the Court with the opportunity to clarify this critical issue.

failed to plead an essential link in the chain of causation—that Mohawk had sufficient market power to affect their wages. See *supra* at note 11. Without such power, it is common sense that Mohawk's supposed payment of below-market wages would simply cause legal workers to go elsewhere—not to remain at Mohawk and voluntarily accept supposedly depressed wages. Rather than examining plaintiffs' allegations in light of *Dura*, the Eleventh Circuit instead held that it was enough for plaintiffs generally to make the conclusory allegation that Mohawk's conduct "ha[d] the purpose and direct result of depressing the wages paid to the plaintiffs." Pet. App. 14a.[16] The Eleventh Circuit's lax approach to § 1964(c)'s requirement that plaintiffs demon-strate proximately caused harm to "business or property" merits this Court's attention.

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[16] The Eleventh Circuit's divergence from this Court's proximate cause jurisprudence is in stark contrast with the Seventh Circuit's rejection of a similar theory as inherently speculative. *See Baker*, 357 F.3d at 692. Although ultimately deciding the case based on plaintiffs' failure to adequately plead a distinct enterprise, the Seventh Circuit noted that an increased supply of labor due to hiring illegal aliens would not have a localized effect, but would influence "wages throughout the region (if not the country)." *Id.* Further, a myriad of factors would influence whether the defendant's actions were the proximate cause of plaintiffs' harm, including whether certain employees' decision to move to another employer who was paying higher wages would have a greater effect on wages than defendant's actions. *Id.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

CARTER G. PHILLIPS*
JUAN P. MORILLO
STEVEN T. COTTREAU
JULIE A. GURLEY
MATTHEW J. WARREN
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K STREET, NW
WASHINGTON, DC 20005
(202) 736-8000

Counsel for Petitioner

October 7, 2005

* Counsel of Record

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 04-13740

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs-Appellees,

v.

MOHAWK INDUSTRIES, INC.,
Defendant-Appellant.

June 9, 2005

Appeal from the United States District Court for the Northern District of Georgia.

Before ANDERSON, HULL and GIBSON*, *Circuit Judges.*

PER CURIAM:

In this case, Plaintiffs Shirley Williams, Gale Pelfrey, Bonnie Jones, and Lora Sisson are current or former hourly employees of Defendant Mohawk Industries, Inc. The plaintiffs filed this class-action complaint alleging that Mohawk's widespread and knowing employment and harboring of illegal workers allowed Mohawk to reduce labor costs by depressing wages for its legal hourly employees and discourage worker's-compensation claims, in violation of federal and state RICO statutes. The plaintiffs also alleged

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* Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.

that Mohawk was unjustly enriched by the lower wages it paid, as well as the reduced number of worker's-compensation claims it paid. The district court denied in part and granted in part Mohawk's 12(b)(6) motion, and this interlocutory appeal followed. After review and oral argument, we affirm in part and reverse in part.

I. BACKGROUND

Mohawk is the second largest carpet and rug manufacturer in the United States and has over 30,000 employees. According to the plaintiffs, Mohawk has conspired with recruiting agencies to hire and harbor illegal workers in an effort to keep labor costs as low as possible.[1] For example, according to the plaintiffs' complaint

> Mohawk employees have traveled to the United States Border, including areas near Brownsville, Texas, to recruit undocumented aliens that recently have entered the United States in violation of federal law. These employees and other persons have transported undocumented aliens from these border towns to North Georgia so that those aliens may procure employment at Mohawk. Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.

Furthermore, "[v]arious recruiters, including Mohawk employees, have provided housing to these illegal workers upon their arrival in North Georgia and have helped them find

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[1] At this point in the litigation, we must assume the facts set forth in the plaintiffs' complaint are true. *See Marsh v. Butler County*, 268 F.3d 1014, 1023 (11th Cir.2001) (*en banc*) (setting forth the facts in the case by "[a]ccepting all well-pleaded factual allegations (with reasonable inferences drawn favorably to Plaintiffs) in the complaint as true"). Because we must accept the allegations of plaintiffs' complaint as true, what we set out in this opinion as "the facts" for Rule 12(b)(6) purposes may not be the actual facts.

illegal employment with Mohawk." Additionally, Mohawk knowingly or recklessly accepts fraudulent documentation from the illegal aliens.

The plaintiffs further allege that Mohawk has concealed its efforts to hire and harbor illegal aliens by destroying documents and assisting illegal workers in evading detection by law enforcement. According to plaintiffs' complaint, Mohawk takes steps to shield those illegal aliens from detection by, among other things, helping them evade detection during law enforcement searches and inspections at Mohawk's facilities.

According to the complaint, Mohawk's widespread and knowing employment and harboring of illegal workers has permitted Mohawk to reduce labor costs. Mohawk has done so by reducing the number of legal workers it must hire and, thereby, increasing the labor pool of legal workers from which Mohawk hires. This practice permits Mohawk to depress the wages it pays its legal hourly workers.

Finally, the plaintiffs allege that Mohawk is "able to save substantial sums of money" by paying its workers reduced wages. Furthermore, Mohawk knows that illegal workers are less likely to file worker's-compensation claims, and, therefore, Mohawk is able to save additional monies. According to the plaintiffs, these benefits constitute unjust enrichment under state law.

Mohawk filed a Rule 12(b)(6) motion to dismiss the plaintiffs' complaint for failure to state a claim. The district court determined that the plaintiffs had stated a claim under both federal and state RICO statutes, as well as a claim for unjust enrichment under state law for paying legal workers lower wages because of the illegal workers Mohawk employed. However, the district court dismissed the plaintiffs' unjust-enrichment claim insofar as it was based on the reduced

number of worker's-compensation claims Mohawk was forced to pay.[2]

II. FEDERAL RICO CLAIMS

Pursuant to 18 U.S.C. § 1962(c), it is illegal "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ." 18 U.S.C. § 1962(c). Thus, in order to establish a federal civil RICO violation under § 1962(c), the plaintiffs "must satisfy four elements of proof: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Jones v. Childers*, 18 F.3d 899, 910 (11th Cir.1994) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985)). These requirements apply whether the RICO claim is civil or criminal in nature.

In civil cases, however, RICO plaintiffs must also satisfy the requirements of 18 U.S.C. § 1964(c). Section 1964(c) states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . . ." 18 U.S.C. § 1964(c). Thus, under § 1964(c), civil RICO claimants, such as the plaintiffs here, must show (1) the requisite injury to "business or property," and (2) that such injury was "by reason of" the substantive RICO violation. We discuss each of these requirements in turn.

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[2] This Court reviews the denial of a Rule 12(b)(6) motion "de novo, applying the same standard as the district court did." *Hoffman-Pugh v. Ramsey*, 312 F.3d 1222, 1225 (11th Cir.2002). A complaint should not be dismissed pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim." *Beck v. Deloitte & Touche*, 144 F.3d 732, 735 (11th Cir.1998) (internal quotation marks and citation omitted).

A. Pattern of Racketeering Activity

As mentioned above, there are four requirements under § 1962(c). Because elements (3) and (4)—a pattern of racketeering activity—are easily met in this case (at least at the motion-to-dismiss stage), we address them first.

"A 'pattern of racketeering activity,' for purposes of the RICO Act, 'requires at least two acts of racketeering activity.'" *Cox v. Administrator U.S. Steel & Carnegie*, 17 F.3d 1386, 1397 (11th Cir.1994), *modified on other grounds by* 30 F.3d 1347 (11th Cir.1994). "An act of racketeering is commonly referred to as a 'predicate act.' A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." *Maiz v. Virani*, 253 F.3d 641, 671 (11th Cir.2001) (quotation marks, citations, and brackets omitted). "If distinct statutory violations are found, the predicate acts will be considered to be distinct irrespective of the circumstances under which they arose." *Cox*, 17 F.3d at 1397 (quotation marks, citations, and emphasis omitted).

According to 18 U.S.C. § 1961(1)(F), "'racketeering activity' means any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), . . . if the act indictable under such section of such Act was committed for the purpose of financial gain." In this case, the plaintiffs have alleged that the defendant has engaged in an open and ongoing pattern of violations of section 274 of the Immigration and Nationality Act. In particular, plaintiffs allege that Mohawk has violated and continues to violate: (1) 8 U.S.C. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire[ ] for employment at least 10 individuals with actual knowledge that the individuals are aliens" during a twelve-month period; (2) 8 U.S.C. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal[ ], harbor[ ], or shield from detection, or attempt[ ] to conceal, harbor or shield from detection" aliens

that have illegally entered the United States; and (3) 8 U.S.C. § 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage[ ] or induce[ ] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." According to the plaintiffs' complaint, Mohawk has committed hundreds, even thousands, of violations of federal immigration laws. Consequently, we conclude that the plaintiffs have properly alleged a "pattern of racketeering activity."[3]

B. Conduct of an Enterprise

With regard to elements (1) and (2) of the four-part test under § 1962(c), the plaintiffs must establish "conduct of an enterprise" and that the enterprise had a common goal. *See United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 2528-29, 69 L.Ed.2d 246 (1981) ("The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."). Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S.Ct. 1163, 1173, 122 L.Ed.2d 525 (1993).

An enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). As stated in *United States v. Goldin Indus., Inc.*, 219 F.3d 1271, 1275 (11th Cir.2000), "the existence of an enterprise is proved by evidence of an

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[3] There is no dispute that these predicate acts, if they occurred, are related. *See Pelletier v. Zweifel*, 921 F.2d 1465, 1496-97 (11th Cir.1991) ("Predicate acts are related if they have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." (internal quotation marks and citation omitted)).

ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." (internal quotation marks and citation omitted). Furthermore, "the definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation." *Id.*

In this case, the plaintiffs have alleged that Mohawk and third-party temp agencies/recruiters have conspired to violate federal immigration laws, destroy documentation, and harbor illegal workers. Specifically, the plaintiffs allege that

> [e]ach recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment need by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

Given the Rule 12(b)(6) stage of the litigation, the plaintiffs' complaint must be taken as true, and it has sufficiently alleged an "enterprise" under RICO; that is an association-in-fact between Mohawk and third-party recruiters. This Court has never required anything other than a "loose or informal" association of distinct entities. Mohawk and the third-party recruiters are distinct entities that, at least according to the complaint, are engaged in a conspiracy to bring illegal

workers into this country for Mohawk's benefit. As such, the complaint sufficiently alleges an "enterprise" under RICO.

As for the common purpose, the plaintiffs' complaint alleges that "[t]he recruiters and Mohawk share the common purpose of obtaining illegal workers for employment by Mohawk." The complaint further alleges that "[e]ach recruiter is paid a fee for each worker it supplies to Mohawk" and that "Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors." Furthermore, "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce." What is clear from the complaint is that each member of the enterprise is allegedly reaping a large economic benefit from Mohawk's employment of illegal workers.

In *United States v. Church*, 955 F.2d 688, 698 (11th Cir. 1992), this Court concluded that the common purpose of making money was sufficient under RICO. Because the complaint clearly alleges that the members of the enterprise stand to gain sufficient financial benefits from Mohawk's widespread employment and harboring of illegal workers, the plaintiffs have properly alleged a "common purpose" for the purposes of RICO.

Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." *Reves*, 507 U.S. at 185, 113 S.Ct. at 1173. That is, Mohawk "must have some part in directing" the affairs of the enterprise. *Id.* at 179, 113 S.Ct. at 1170. However, the Supreme Court has cautioned that "RICO liability is not limited to those with primary responsibility for the enterprise's affairs . . . ." *Id.* In their complaint, the plaintiffs allege that "Mohawk participates in the operation and management of the affairs of the enterprise . . . ," which includes some direction over the recruiters. Whatever difficulties the plaintiffs may have in proving such

an allegation, they have sufficiently alleged that Mohawk is engaged in the operation or management of the enterprise. Again, at this stage in the litigation, we simply cannot say whether the plaintiffs will be able to establish that Mohawk had "some part in directing" the affairs of the enterprise. However, they have alleged sufficient acts to survive a Rule 12(b)(6) motion.

Accordingly, we conclude that the plaintiffs' complaint states a claim that is cognizable under § 1962(c). In so doing, we note that the allegations in this case are similar to those in cases recently decided by the Second, Sixth, and Ninth Circuits. *See Trollinger v. Tyson Foods*, 370 F.3d 602 (6th Cir.2004) (former employees alleging employer used illegal immigrants in order to depress wages); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir.2002) (legally documented workers alleging that employers leveraged hiring of undocumented workers in order to depress wages); *Commercial Cleaning Servs., L.L.C. v. Colin Service Sys., Inc.*, 271 F.3d 374 (2d Cir.2001) (company alleging competitor hired undocumented workers in order to underbid competing firms). In each of these decisions, the circuit court determined that, at the Rule 12(b)(6) stage, the plaintiffs had alleged sufficient damages to be permitted to pursue their RICO claims. Although none of the opinions specifically addressed § 1962(c)'s requirements, each of these cases has essentially the same factual basis for RICO liability as the complaint before this Court.

We recognize that the above conclusion puts our circuit in conflict with the Seventh Circuit's decision in *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir.2004), *cert. denied*, — U.S. —, 125 S.Ct. 412, 160 L.Ed.2d 318 (2004). In *Baker*, an employees' class-action lawsuit alleged that a meat-processing facility conspired with recruiters (and a Chinese aid group), and violated RICO by employing undocumented, illegal workers in an effort to drive down employee wages.

The Seventh Circuit concluded that the employees' union was a necessary party to the lawsuit. *Id.* at 690-91.

However, the Seventh Circuit in *Baker* also concluded that there was "another fatal problem" with the complaint. *Id.* at 691. Although stating that an "enterprise" arguably existed, the Seventh Circuit determined that there was not a common purpose among the entities in the enterprise. *Id.* Specifically, the Seventh Circuit stated that the employer "wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less); the Chinese Mutual Aid Association wants to assist members of its ethnic group. These are divergent goals." *Id.*

In our circuit, however, there has never been any requirement that the "common purpose" of the enterprise be the sole purpose of each and every member of the enterprise. In fact, it may often be the case that different members of a RICO enterprise will enjoy different benefits from the commission of predicate acts. This fact, however, is insufficient to defeat a civil RICO claim. Rather, all that is required is that the enterprise have *a* common purpose. In this case, the complaint alleges that Mohawk and the recruiters, under Mohawk's direction, worked together to recruit illegal workers to come to Georgia and that they had the common purpose of providing illegal workers to Mohawk so that Mohawk could reduce its labor costs and the recruiters could get paid. This commonality is all that this circuit's case law requires. *See Church*, 955 F.2d at 698. Again, while the plaintiffs may be unable to prove such allegations at trial, we cannot say at this 12(b)(6) stage of the litigation that they have failed to properly allege a common purpose.

We recognize that the *Baker* Court also concluded that there was no way to establish that the employer "operate[d] or manage[d] th[e] enterprise through a pattern of racketeering activity." *Baker*, 357 F.3d at 691 (emphasis omitted). However, as this Court has noted, "the Supreme Court has yet to

delineate the exact boundaries of the operation or management test." *United States v. Starrett*, 55 F.3d 1525, 1546 (11th Cir.1995). Although the exact boundaries have not been established, it is possible that the plaintiffs will be able to establish that Mohawk played some part in directing the affairs of the enterprise. Whether the plaintiffs ultimately establish sufficient evidence to meet the boundaries of the operation-or-management test is a question best answered at the summary-judgment stage or at trial. Accordingly, we conclude that the plaintiffs have sufficiently alleged conduct that may potentially satisfy the operation-or-management test. As such, the plaintiffs are entitled to continue with their claims at this juncture.

Having reviewed the four elements of § 1962(c), we turn to § 1964(c).

C. Injury to "Business or Property" Interest Under RICO

As indicated above, RICO's civil-suit provision states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . . ." 18 U.S.C. § 1964(c). "The terms 'business or property' are, of course, words of limitation which preclude [certain forms of] recovery." *Doe v. Roe*, 958 F.2d 763, 767 (7th Cir.1992). However, RICO is to be "liberally construed." *Sedima*, 473 U.S. at 497-98, 105 S.Ct. at 3285-86. Accordingly, we must determine whether the plaintiffs have a "business or property" interest that could be injured under RICO. We need not reach whether plaintiffs have a property interest because plaintiffs clearly have alleged a business interest affected by Mohawk's alleged RICO violations.

Indeed, this case is similar to the Ninth Circuit's *Mendoza* decision, where legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed wages by hiring illegal workers. In *Mendoza*, the defendant

claimed that the employees would have to show a "'property right' in the lost wages[ ] by showing that they were promised or contracted for higher wages." *Mendoza*, 301 F.3d at 1168 n. 4. The Ninth Circuit concluded that this argument was misplaced, pointing out that the plaintiffs' claim did not implicate procedural due process. *Id.* Rather, the Ninth Circuit concluded that "what is required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes." *Id.* (citations omitted). Given that a relationship clearly exists between plaintiff workers and their employer, Mohawk, we conclude that a similar business interest exists in this case, and that the employees' alleged injury to their business interests satisfies the business-interest requirement. Consequently, the plaintiffs have alleged a sufficient injury to a business interest to pursue their RICO claims.

D. "By Reason Of" the Substantive RICO Violations

We now turn to the "by reason of" requirement contained in § 1964(c). The "by reason of" requirement implicates two concepts: (1) a sufficiently direct injury so that a plaintiff has standing to sue; and (2) proximate cause, whereby the wrongful conduct is shown to be a substantial cause of the alleged injury and the causal connection is foreseeable and not speculative. *See Trollinger*, 370 F.3d at 612 ("RICO's civil-suit provision imposes two distinct but overlapping limitations on claimants—standing and proximate cause."); *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1307 (11th Cir.2003), *cert. denied*, 541 U.S. 1037, 124 S.Ct. 2094, 158 L.Ed.2d 723 (2004) ("[O]ne or more of the predicate acts [in a RICO claim] must not only be the 'but for' cause of the injury, but the proximate cause as well." (citations omitted)); *Mendoza*, 301 F.3d at 1168-72 (concluding that the plaintiffs had satisfied both "statutory" and "constitutional" standing requirements of RICO); *see also Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258,

268-69, 112 S.Ct. 1311, 1318, 117 L.Ed.2d 532 (1992) (stating in a RICO case that "a plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts was generally said to stand at too remote a distance to recover" (citations omitted)). Despite some significant overlap, we address the proximate cause and standing concepts separately.[4]

(i) Proximate Cause

"It is well-established that RICO plaintiffs must prove proximate causation in order to recover." *Cox*, 17 F.3d at 1399 (citations omitted). "A proximate cause is not, however, the same thing as a sole cause. Instead, a factor is a proximate cause if it is a substantial factor in the sequence of responsible causation." *Id.* (internal quotation marks and citation omitted).

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[4] As the Sixth Circuit aptly explained,

> the two concepts overlap and that is particularly true in the context of civil RICO claims. As a general matter, they overlap because a plaintiff who lacks standing to vindicate a derivative injury also will be unable to show proximate cause. And as a matter of RICO law, the two concepts overlap because they both grow out of the "by reason of" limitation in RICO—namely, the requirement that claimants establish that their injury was "by reason of" a RICO predicate act violation. The "by reason of" limitation, in other words, bundles together a variety of "judicial tools," some of which are traditionally employed to decide causation questions and some of which are employed to decide standing questions. *Holmes*, 503 U.S. at 268, 112 S.Ct. [at 1318] ("Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts. At bottom, the notion of proximate cause reflects ideas of what justice demands, or of what is administratively possible and convenient.") (quotation omitted). . . .

Trollinger, 370 F.3d at 613.

In this case, the plaintiffs have alleged sufficient proximate cause to withstand defendant Mohawk's motion to dismiss. According to their complaint, Mohawk has hired illegal workers "[i]n an effort to keep labor costs as low as possible." Furthermore, "Mohawk's employment and harboring of large numbers of illegal workers has enabled Mohawk to depress wages and thereby pay all of its hourly employees, including legally employed workers who are members of the class, wages that are lower than they would be if Mohawk did not engage in this illegal conduct." Again, the complaint alleges that "Mohawk's widespread employment and harboring of illegal workers has substantially and unlawfully increased the supply of workers from which Mohawk makes up its hourly workforce. This unlawful expansion of the labor pool has permitted Mohawk to depress the wages that it pays all its hourly employees . . . ." The plaintiffs also allege that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power" and that they "were injured by direct and proximate reason of Mohawk's illegal conduct."

Given these allegations, which we must assume are true at this Rule 12(b)(6) stage of the litigation, it is clear that the plaintiffs have properly alleged proximate cause. According to the complaint, Mohawk's widespread scheme of hiring and harboring of illegal workers has the purpose and direct result of depressing the wages paid to the plaintiffs. This is all that is needed to establish proximate cause.

Our conclusion is consistent with the two other circuits to have addressed this proximate cause issue in RICO decisions involving schemes to depress wages of legal workers by widespread hiring of illegal workers. *See Trollinger*, 370 F.3d at 619; *Mendoza*, 301 F.3d at 1171-72.

In *Trollinger*, the Sixth Circuit considered a situation in which former Tyson employees at a poultry processing plant

sued their former employer under RICO, alleging that the use of illegal workers permitted the employer to lower wages via the collective-bargaining agreement with the union representing the employees. The Sixth Circuit, reviewing the district court's dismissal of the employees' complaint under Rule 12(b)(6), determined that "at this preliminary stage in the proceedings" it could not conclude that there was no likelihood of success on the merits. *Trollinger*, 370 F.3d at 619. The Sixth Circuit explained that it remained possible that the legal-worker plaintiffs might prove the following allegations in their complaint:

> (1) that Tyson hired sufficient numbers of illegal aliens to impact the legal employees' wages; (2) that each additional illegal worker hired into the bargaining unit by Tyson has a measurable impact on the bargained-for wage-scale; (3) that the illegal immigrants allegedly brought into this country through Tyson's efforts allowed Tyson not to compete with other businesses for unskilled labor; and (4) that Tyson's legal workers did not "choose" to remain at Tyson for less money than other businesses offered, but had no choice in the matter given the hiring needs of the other businesses in the area and the influx of illegal immigrants at Tyson's facilities. While Tyson's proximate-cause argument may well carry the day at the summary-judgment stage, it requires more assistance than the complaint alone provides.
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> One other circuit has reached the same result on somewhat similar facts . . . *Mendoza*. . . .

Id.[5]

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[5] As noted earlier, in *Mendoza*, the Ninth Circuit was faced with a similar suit in which legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed wages by hiring illegal-immigrant workers. 301 F.3d at 1166. Under almost the exact same legal theory as advanced in this case, the *Mendoza* Court concluded

Although the plaintiffs in this case may not ultimately satisfy the proximate-cause requirement, we conclude it remains possible that plaintiffs may prove their allegations, and we cannot say at this Rule 12(b)(6) stage that there is no possibility of such proof. Consequently, we join the Sixth and Ninth Circuits in concluding that employees such as the ones in this case have alleged sufficient proximate cause to proceed with their RICO claims.

(ii) Statutory Standing

Lastly, we address RICO's statutory standing limitation that also grows out of the "by reason of" limitation in § 1964(c). "[T]he test for RICO standing is whether the alleged injury was directly caused by the RICO violation, not whether such harm was reasonably foreseeable." *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 908 (11th Cir.1998); *see Sedima*, 473 U.S. at 496-97, 105 S.Ct. at 3285 ("[T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation" and the plaintiff's damages must "flow from the commission of the predicate acts."); *Green Leaf Nursery*, 341 F.3d at 1307 (stating that plaintiffs must show a "direct relation between the injury asserted and the injurious conduct" and that we ask "whether the alleged conduct was 'aimed primarily' at a third party" (quotation marks and citations omitted)); *Bivens*, 140 F.3d at 906 (concluding that a party whose alleged injuries result from "the misfortunes visited upon a third person by the defendant's acts lacks standing to pursue a claim under RICO" (quotation marks and citation omitted)); *Pelletier v. Zweifel*, 921 F.2d 1465, 1497 (11th Cir.1991) (stating that the plaintiff has RICO standing if he shows "a causal connection between his injury and a

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that the plaintiffs' "causation allegations are sufficient at this stage." *Id.* at 1172.

predicate act").[6] Thus, we must evaluate whether the plaintiffs' injury is sufficiently direct to give plaintiffs standing to sue for Mohawk's alleged RICO violations.

Both the Sixth and Ninth Circuits have expressly concluded that legal workers have sufficiently direct injuries for RICO standing in similar cases. *Trollinger*, 370 F.3d at 615-618; *Mendoza*, 301 F.3d at 1170. The Ninth Circuit's *Mendoza* decision is particularly well-reasoned and instructive on the statutory standing issue.

As mentioned earlier, the *Mendoza* plaintiffs were legal workers who claimed that the purpose and result of the defendants' scheme of hiring undocumented immigrants was to depress the wages of legally documented employees. The Ninth Circuit concluded that the plaintiffs had statutory standing because "we are unable to discern a more direct victim of the illegal conduct." *Mendoza*, 301 F.3d at 1170. The Ninth Circuit explained:

> The documented employees here do not complain of a passed-on harm. They allege that the scheme had the purpose and direct result of depressing the wages paid to them by the growers. Thus, as the district court correctly determined, "plaintiffs have stated a claim that they are the direct victims of the illegal hiring scheme."
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> . . .
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> We also note that the undocumented workers cannot "be counted on to bring suit for the law's vindication." As the district court noted, the fact that RICO specifically provides that illegal hiring is a predicate offense

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[6] This Court has more often evaluated the "by reason of" requirement primarily as part of its proximate-cause analysis, as opposed to the distinct concept of standing. However, despite significant overlap, we must also examine whether the plaintiffs' injury is sufficiently direct to permit standing.

> indicates that Congress contemplated the enforcement of the immigration laws through lawsuits like this one.

Id. (internal citations omitted). The Ninth Circuit further stated that

> the workers must be allowed to make their case through presentation of evidence, including experts who will testify about the labor market, the geographic market, and the effects of the illegal scheme. Questions regarding the relevant labor market and the growers' power within that market are exceedingly complex and best addressed by economic experts and other evidence at a later stage in the proceedings.

Id. at 1171.

Plaintiffs' complaint clearly alleges that Mohawk has engaged in widespread and knowing hiring and harboring of illegal aliens with the express purpose and direct result of lowering the wages of legal workers. For example, the complaint alleges that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power." The plaintiffs also allege that "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce." Furthermore, the plaintiffs "were injured by direct and proximate reason of Mohawk's illegal conduct." Given this stage of the litigation, we conclude that the plaintiffs have sufficiently alleged that Mohawk's illegal conduct was aimed primarily at them. Consequently, the district court correctly denied Mohawk's 12(b)(6) motion as it relates to the plaintiffs' federal civil RICO claim.

III. STATE LAW RICO

Under the Georgia RICO statute, "[i]t is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." O.C.G.A. 16-14-4(a). Unlike federal civil RICO, the Georgia RICO statute does not require proof of an "enterprise." *Cobb County v. Jones Group, P.L.C.*, 218 Ga.App. 149, 460 S.E.2d 516, 520-21 (1995). Rather, under Georgia RICO, the plaintiffs need only establish racketeering activity; that is, "a plaintiff must show that the defendant committed predicate offenses (set forth in O.C.G.A. § 16-14-3(9)) at least twice." *Id.* at 521 (quotation marks and citation omitted).

With regard to their state-law RICO claim, the plaintiffs rely on 18 U.S.C. § 1546 (relating to the fraud and misuse of visas, permits, and other documents) for their predicate offenses.[7] Despite being limited to § 1546, the plaintiffs have alleged sufficiently numerous violations to satisfy the racketeering activity requirement under Georgia state law. In fact, according to the complaint, "Mohawk has committed hundreds, probably thousands, of violations of . . . 18 U.S.C. § 1546 as part of its pattern of racketeering activity."

There are, however, two issues under the Georgia RICO statute that warrant further discussion: (1) whether, under the Georgia RICO statute, a corporation may be sued; and (2)

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[7] According to O.C.G.A. § 16-14-3(9)(A)(xxix), "racketeering activity" is defined as "conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)." The only "racketeering activity" contained in 18 U.S.C. § 1961(1)(A), (B), (C), or (D) on which the plaintiffs rely is 18 U.S.C. § 1546. To the extent the plaintiffs attempt to rely on 8 U.S.C. § 1324, as they do with their federal civil RICO claims, such a claim is barred under the Georgia RICO statute because 8 U.S.C. § 1324 is listed as a "racketeering offense" in 18 U.S.C. § 1961(1)(F), and not in subsections (A), (B), (C), or (D).

whether the plaintiffs have sufficiently alleged proximate cause to have standing to bring a Georgia RICO suit.

A. Whether Corporations May be Sued Under Georgia RICO

"Although this is a civil suit, RICO predicate acts are criminal offenses." *Cobb County*, 460 S.E.2d at 521 (quotation marks omitted). Therefore, in order to determine whether a corporation may be held liable under RICO, Georgia courts look to O.C.G.A. § 16-2-22. *See Cobb County*, 460 S.E.2d at 521.

There are two means by which a corporation may be held liable: (1) directly (under O.C.G.A. § 16-2-22(a)(1)); and (2) through its agents and employees under certain situations (under O.C.G.A. § 16-2-22(a)(2)). The Georgia Supreme Court already has concluded that corporations may not be sued directly under RICO. *Clark v. Security Life Ins. Co. of America*, 270 Ga. 165, 509 S.E.2d 602, 604 n. 11 (1998) ("A corporation may also face prosecution under O.C.G.A. § 16-2-22(a)(1) for a crime if the statute defining the crime clearly indicates a legislative purpose to impose liability on a corporation. RICO, however, is not such a statute . . . .").

Although a corporation cannot be prosecuted directly under RICO, a corporation will be liable under Georgia RICO "if the 'crime is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a managerial official who is acting within the scope of his employment.'" *Clark*, 509 S.E.2d at 604 (quoting § 16-2-22(a)(2)). Whether the acts were performed at the request, command, or authorization of the board of directors or other managers is a question of proof at trial, not a sufficiency-of-the-pleading issue. *See State v. Military Circle Pet Center No. 94, Inc.*, 257 Ga. 388, 360 S.E.2d 248, 249 (1987) ("Although the state must prove the applicable provisions of [§ 16-2-22(a)(2)] at trial against a criminal defendant, it is not necessary that the state allege these provisions in the accusation.").

In this case, the plaintiffs' complaint alleges that "Mohawk supervisors have encouraged these [illegal-immigrant] employees to return to the United States and reapply for work at Mohawk in violation of United States law." Furthermore, "Mohawk also has knowingly and recklessly accepted proof of eligibility for employment documents that reflect successive different names for a single person." The plaintiffs' complaint is rife with allegations that supervisors and managers at Mohawk were either aware of, or in reckless disregard of, the misuse of various work-related documents. Consequently, the plaintiffs have alleged sufficient conduct that, if proven, would allow them to hold Mohawk liable under state law.

B. Standing to Pursue State-Law RICO Claims

As with Federal RICO claims, under Georgia's RICO statute, "[a]ny person who is injured by reason of any violation of" Georgia's RICO statute "shall have a cause of action for three times the actual damages sustained . . . ." O.C.G.A. § 16-14-6(c). "[B]ecause the state RICO act is modeled upon and closely analogous to the federal RICO statute," Georgia courts "look to federal authority" in determining RICO standing. *Maddox v. So. Engineering Co.*, 231 Ga.App. 802, 500 S.E.2d 591, 594 (1998) (quotation marks and citation omitted). We already have concluded that the plaintiffs have alleged sufficient injury to pursue their federal RICO claims, and accordingly, we conclude that they have alleged a sufficient injury to pursue their state RICO claims as well. Although under Georgia law the plaintiffs are limited to predicate acts arising out of 18 U.S.C. § 1546, we conclude that the plaintiffs' allegations are neither too remote nor too indirect to satisfy Georgia's proximate-cause requirement under state-law RICO. *See Maddox*, 500 S.E.2d at 594 ("In short, the language 'by reason of' imposes a proximate causation requirement on the plaintiff." (citation omitted)); *id.*

(A plaintiff "must show a causal connection between his injury and a predicate act." (citation omitted)).

IV. UNJUST ENRICHMENT

The plaintiffs' complaint claims that Mohawk's illegal conduct permits it "to reap substantial wage savings" because Mohawk pays plaintiffs lower wages than it would otherwise be forced to pay. Therefore, according to the plaintiffs' complaint, Mohawk has been unjustly enriched under state law. Plaintiffs also claim that Mohawk has been unjustly enriched because the hiring of illegal aliens has led to a reduced number of worker's-compensation claims. Both of plaintiffs' state-law unjust-enrichment claims fail.

Here, the plaintiffs were all paid an agreed-upon wage. In essence, the plaintiffs have a contract to work for the defendant and were paid the agreed-upon wage. In Georgia, "[u]njust enrichment is an equitable concept and applies when as a matter of fact there is no legal contract . . . ." *St. Paul Mercury Ins. Co. v. Meeks*, 270 Ga. 136, 508 S.E.2d 646, 648 (1998) (quotation marks and citation omitted); *see Bonem v. Golf Club of Georgia, Inc.*, 264 Ga.App. 573, 591 S.E.2d 462, 467-68 (2003). In this case, there was a legal contract as a matter of fact (i.e., if the plaintiffs were not paid, they could sue for breach of the employment contract). *See, e.g., SurgiJet, Inc. v. Hicks*, 236 Ga.App. 80, 511 S.E.2d 194, 195 (1999); *Brazzeal v. Commercial Cas. Ins. Co.*, 51 Ga.App. 471, 180 S.E. 853, 853 (1935). Therefore, there can be no unjust enrichment. Consequently, the plaintiffs' unjust-enrichment claim as it related to Mohawk's purported savings from lower wages should have been dismissed.

As for plaintiffs' claims that hiring illegal workers resulted in fewer worker's-compensation claims, there is no reasonable allegation that this fact, even if true, is connected to the plaintiffs receiving lower wages. To put it another way, the fact that Mohawk may have increased profits by lowering the

number of worker's-compensation claims it paid is not related to what wages Mohawk paid the plaintiffs. Consequently, the district court correctly determined that the plaintiffs did not have standing to assert this claim.

V. CONCLUSION

For all the above reasons, we conclude that the district court properly denied Mohawk's Rule 12(b)(6) motion as it related to both the plaintiffs' federal and state RICO claims. Furthermore, the district court properly dismissed the plaintiffs' unjust-enrichment claim as it related to worker's compensation. However, the district court should have also dismissed the plaintiffs' unjust-enrichment claim as it related to the agreed-upon wages that plaintiffs received.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

APPENDIX B

UNITED STATES DISTRICT COURT
N.D. GEORGIA
ROME DIVISION

No. CIV.A.4:04-CV-0003-H

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, and LORA SISSON, individually and on behalf of a class,
Plaintiffs,

v.

MOHAWK INDUSTRIES, INC.,
Defendant.

April 12, 2004

ORDER

MURPHY, *District Judge*.

This is a class action alleging violations of the federal and Georgia Racketeer Influenced and Corrupt Organizations Acts ("RICO"). The case is before the Court on Defendant's Motion to Dismiss [25].

I. Background

A. The Parties

Plaintiffs are current and former hourly employees of Defendant who claim that Defendant's alleged employment and harboring of illegal aliens has depressed their wages. (Compl.¶ 1.) Plaintiffs Gale Pelfrey, Shirley Williams, Bonnie Jones, and Lora Sisson are citizens of Georgia and reside in the Northern District of Georgia. (*Id.* ¶¶ 5-8.) Plaintiffs Pelfrey, Williams, and Sisson are former hourly employees of Defendant. (Compl.¶¶ 5, 6, 8.) Plaintiff Jones is currently an

hourly employee of Defendant. (*Id.* ¶ 7.) Plaintiffs Pelfrey, Williams, Sisson, and Jones are eligible to be employed in the United States. (*Id.* ¶¶ 5-8.) Plaintiffs seek certification of a class consisting of all current and former employees of Defendant legally authorized to be employed in the United States who are or have been employed in hourly wage positions at any time since January 5, 1999, to the present (the "Class").[1] (*Id.* ¶ 39.)

Defendant is the second largest carpet and rug manufacturer in the United States. (Compl.¶ 2.) Defendant employs approximately 31,780 persons, most of whom are employed in Northwest Georgia. (*Id.*) Defendant owns or leases at least twenty-six facilities in Georgia. (*Id.*) Defendant is a Delaware corporation with its principal place of business in Calhoun, Georgia. (*Id.* ¶ 9.)

B. Plaintiffs' Allegations

Plaintiffs allege that Defendant has engaged in illegal hiring of persons who are not eligible for employment in the United States in an effort to keep costs of labor as low as possible. (Compl.¶ 14.) According to Plaintiffs, Defendant has accepted for employment and continues to employ workers that it knew or had reason to know were not authorized to work in the United States. (*Id.* ¶ 15.) Plaintiffs allege that Defendant has knowingly and recklessly accepted false documents or documents that do not match the identity of the person presenting the documents as proof of eligibility for employment. (*Id.* ¶ 16.) Additionally, Plaintiffs claim that Defendant has knowingly and recklessly accepted proof of eligibility for employment documents reflecting successive different names for a single person. (*Id.* ¶¶ 17, 19.) Indeed,

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[1] Plaintiffs' Complaint also sets forth a number of allegations relating to the certification of a class of Defendant's former and current hourly employees. (*See* Compl. ¶¶ 39-53.) Those allegations are not relevant to the instant Motion.

Plaintiffs allege that when some illegal workers have informed Defendant that they would return to their countries of origin, supervisors employed by Defendant have encouraged those employees to return to the United States and illegally reapply for work at Defendant. (*Id.* ¶ 18.)

Plaintiffs claim that in an effort to conceal Defendant's employment and harboring of illegal workers, Defendant's employees have destroyed eligibility documents indicating that workers have employed different names and identification papers. (Compl.¶ 20.) Furthermore, according to Plaintiffs, Defendant's employees and supervisors have stated that they are aware that illegal workers can easily obtain false identification and work authorization documents. (*Id.* ¶ 21.)

Plaintiffs claim that Defendant's employees have traveled to the United States border to recruit illegal aliens. (Compl. ¶ 22.) According to Plaintiffs, those employees and other persons then transported the illegal aliens to North Georgia for employment at Defendant's facilities. (*Id.*) Plaintiffs allege that Defendant has provided incentive to its employees and other recruiters by paying for locating illegal workers that Defendant eventually employs and harbors. (*Id.*) Plaintiffs contend that Defendant's employees and recruiters have provided housing for illegal workers when the workers arrived in North Georgia, and have aided those illegal workers in finding employment with Defendant. (*Id.* ¶ 23.)

Occasionally, Defendant audits its workforce and discovers illegal workers are employed with Defendant. (Compl.¶ 24.) According to Plaintiffs, Defendant has not increased the frequency of such audits despite the fact that the audits reveal that a large number of illegal workers are employed at Defendant. (*Id.*) Furthermore, Plaintiffs allege that when Defendant terminates an illegal worker after discovering that the illegal worker is not authorized to work in the United States, the worker frequently returns to work under a different name. (*Id.* ¶ 25.) Plaintiffs claim that this practice, termed

"recycling," is widespread at Defendant. (*Id.* ¶ 26.) According to Plaintiffs, Defendant has been further put on notice of illegal workers because many illegal workers artificially inflate their claimed exemptions, thus avoiding paying federal income tax. (*Id.* ¶ 32.)

Plaintiffs allege that law enforcement authorities have raided Defendant's facilities in search of illegal workers. (Compl.¶ 27.) Plaintiffs claim that when such raids have occurred, illegal workers have hidden in barrels or other containers or have fled. (*Id.*) According to Plaintiffs, the number of illegal workers who run or hide has put Defendant on notice that it employs a large number of illegal workers. (*Id.*) Moreover, Plaintiffs contend that Defendant's employees and supervisors have assisted illegal workers in evading the law enforcement authorities. (*Id.* ¶ 28.)

Plaintiffs state that law enforcement authorities have arrested some illegal workers at Defendant's facilities. (Compl.¶ 29.) Plaintiffs further allege that law enforcement authorities have discovered undocumented aliens in possession of paychecks issued by Defendant or identification badges and fraudulent identification documents. (*Id.* ¶ 30.)

According to Plaintiffs, Defendant's supervisors have stated that illegal workers are preferable because those workers are more tolerant of working conditions and do not submit claims for workers' compensation. (Compl.¶ 31.) Plaintiffs contend that because many of Defendant's workers are undocumented aliens, Defendant knows that those workers are beholden to Defendant, and thus are unlikely to complain about working conditions or file workers compensation claims. (*Id.* ¶¶ 36-37.) Consequently, Plaintiffs believe that Defendant saves a considerable amount of money by employing undocumented aliens. (*Id.* ¶ 37.)

According to Plaintiffs, Defendant's practice of employing and harboring large numbers of illegal workers has allowed

Defendant to depress wages; consequently, the wages paid to hourly employees, including the legally employed hourly employees who are members of the Class, are lower than those wages would be if Defendant did not employ and harbor illegal workers. (Compl.¶ 33.) Plaintiffs allege that Defendant employs tens of thousands of hourly workers in North Georgia (*id.* ¶ 34), and Defendant's widespread employment and harboring of illegal workers has substantially increased the supply of workers from which Defendant hires its hourly workers (*id.* ¶ 35). Plaintiffs contend that because of the increased size of the labor pool, Defendant has depressed the wages it pays to all of its hourly employees, including members of the Class. (*Id.*) In other words, Plaintiffs claim that Defendant had only hired persons legally authorized to work in the United States, Defendant would have had to pay higher wages to Plaintiffs and the members of the Class. (*Id.*) Thus, according to Plaintiffs, as a direct and proximate result of Defendant's employment and harboring of illegal workers, the wages that Plaintiffs and the members of the Class have earned have been depressed.

C. Plaintiffs' RICO Claims

1. Pattern of Racketeering Activity

Plaintiffs first allege that Defendant is engaged in an ongoing pattern of racketeering activity as defined by 18 U.S.C.A. § 1961(5) & (8). (Compl.¶¶ 54, 56.) According to Plaintiffs, Defendant has engaged in racketeering activity, namely, an open and ongoing pattern of violations of Section 274 of the Immigration and Nationality Act, 8 U.S.C.A. § 1324(a), more than twice, and the most recent occurrence took place within ten years after the commission of a prior act of racketeering activity. (*Id.* ¶ 55, 57, 58.) In particular, Plaintiffs allege that Defendant has violated and continues to violate: (1) 8 U.S.C.A. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire[ ] for employment at least 10 individuals with actual knowledge that the individuals are

aliens" during a twelve month period (*id.* ¶ 59); (2) 8 U.S.C.A. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal[ ], harbor[ ] or shield from detection, or attempt[ ] to conceal, harbor or shield from detection" aliens that have illegally entered the United States (*id.* ¶ 60); and (3) 8 U.S.C.A. § 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage[ ] or induce[ ] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law" (*id.* ¶ 61). Plaintiffs contend that each violation of 8 U.S.C.A. § 1324 constitutes an act of "racketeering activity" as defined by 18 U.S.C.A. § 1961(1)(F). (*Id.* ¶ 62.)

According to Plaintiffs, the "racketeering activity" also includes Defendant's open and ongoing violations of 18 U.S.C.A. § 1546(a) by knowingly accepting various false identification documents and other false documents indicating authorization for legal employment, and Defendant's continued violations of 18 U.S.C.A. § 1546(b) by using such documents to fill out I-9 forms. (Compl.¶¶ 63-64.) Plaintiffs allege that each violation of 18 U.S.C.A. § 1546 constitutes an act of "racketeering activity" as defined by 18 U.S.C.A. § 1961(1)(B) as well as O.C.G.A. § 16-14-3(9)(A)(xxix). (*Id.* ¶¶ 65-66.)

Plaintiffs claim that the acts of Defendant's racketeering activity have the same or similar methods of commission in that those acts involve the knowing employment of illegal workers, the concealment, harboring, and shielding from detection of illegal workers, and the acceptance or use of fraudulent documents in connection with the hiring of illegal workers. (Compl.¶ 67.) According to Plaintiffs, the acts of racketeering activity have the same or similar objective—*i.e.* the reduction of wages paid to Defendant's workforce. (*Id.* ¶ 68.) Plaintiffs allege that the victims of those acts of racketeering activity are the same or similar. (*Id.* ¶ 69.)

Plaintiffs also contend that the distinguishing characteristics of the acts of racketeering activity include the involvement of Defendant, illegal workers, and other third parties who assist in the recruitment and transportation of undocumented aliens. (*Id.* ¶¶ 70, 76-84.)

According to Plaintiffs, those acts of racketeering activity have occurred over a long period of time, and have become a part of Defendant's regular way of doing business. (Compl.¶¶ 71-73.) Plaintiffs assert that Defendant has committed hundreds, and perhaps thousands, of violations of 8 U.S.C.A. § 1324 and 18 U.S.C.A. § 1546 as part of its racketeering activity. (*Id.* ¶ 74.) Indeed, Plaintiffs claim that Defendant's racketeering activity has been so pervasive that illegal workers currently constitute a majority of the workforce in many of Defendant's facilities in North Georgia. (*Id.* ¶ 75.)

2. Enterprise

Plaintiffs also allege that Defendant has engaged in its pattern of racketeering activity through its participation in an association-in-fact enterprise, as defined by 18 U.S.C.A. § 1961(4), with third party employment agencies and other recruiters who supply Defendant with illegal workers. (Compl.¶¶ 76, 79.) Plaintiffs claim that one such recruiter is Temporary Placement Services ("TPS"), which has a formal relationship with Defendant in that TPS employs illegal workers and then loans those workers to Defendant for a fee. (*Id.*) According to Plaintiffs, other recruiters simply find workers in an area surrounding Brownsville, Texas, and then transport those workers to Georgia. (*Id.*) Plaintiffs contend that TPS and other recruiters also occasionally assist current and prospective illegal workers in assuming new identities. (*Id.*) Plaintiffs allege that those recruiters share the common purpose of obtaining illegal workers for employment with Defendant. (*Id.* ¶ 77.) Additionally, Plaintiffs contend that Defendant participates in the operation and management of

the affairs of the enterprise, which exists for Defendant's benefit. (*Id.* ¶ 78.)

Plaintiffs allege that the enterprise affects interstate commerce in that the illegal workers employed by Defendant travel in international and interstate commerce to reach Defendant's facilities in North Georgia. (Compl.¶¶ 80, 81.) According to Plaintiffs, the enterprise also affects interstate commerce in that the wages of legal workers employed with Defendant are depressed. (*Id.* ¶ 82.) Furthermore, Plaintiffs state that because Defendant is a member of the enterprise and is directly engaged in the production, distribution, and acquisition of goods and services in interstate commerce, the enterprise affects interstate commerce. (*Id.* ¶ 83.)

According to Plaintiffs, Defendant, by accepting and retaining the benefits of the racketeering activity, ratified the conduct of Defendant's managers, employees, and the members of the enterprise who assisted Defendant in committing those acts of racketeering activity. (*Id.* ¶ 84.)

3. Causation

Plaintiffs next allege that Defendant's violations of federal and Georgia RICO proximately caused the wages of Plaintiffs and the members of the Class to be lower than their wages otherwise would have been had the labor pool consisted solely of legally employed workers. (Compl.¶ 85.) Thus, Plaintiffs and the Class claim that they have suffered an injury to their business or property. (*Id.* ¶ 86.) As a result, Plaintiffs contend that Defendant has earned or retained significant funds to which it is not entitled. (*Id.* ¶ 87.)

D. Procedural Background

On January 6, 2004, Plaintiffs filed this lawsuit. Plaintiffs assert the following claims: (1) a claim that Defendant's conduct violates 18 U.S.C.A. § 1962(c) (Compl. ¶¶ 88-92); (2) a claim that Defendant's conduct violates O.C.G.A.

§ 16-14-4(a) (*id.* 93-98); (3) a claim that Defendant's conduct violates O.C.G.A. § 16-14-4(c) (*id.* 99-105); and a claim for unjust enrichment arising under Georgia law (*id.* ¶¶ 106-110). Plaintiffs also seek certification of a class pursuant to Federal Rule of Civil Procedure 23. (*Id.* ¶ 46.)

On February 9, 2004, Defendant filed its Motion to Dismiss pursuant to Federal Rules of Civil Procedure (12)(b)(6) and (12)(b)(1),[2] in which Defendant requests that the Court dismiss Plaintiffs' federal and state RICO claims. Defendant also requests that the Court decline to exercise its pendent jurisdiction over Plaintiffs' state law claims.

II. Standard Governing Motions to Dismiss

The standard for a court to dismiss a claim is whether "it appears beyond doubt that the plaintiff can prove no set of facts to support his claim." *GSW, Inc. v. Long County*, 999 F.2d 1508, 1510 (11th Cir.1993) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). When considering a motion to dismiss, the Court "must accept the allegations in the complaint as true, construing them in the light most favorable to the plaintiffs." *White v. Lemacks*, 183 F.3d 1253, 1255 (11th Cir.1999). However, "[a]s a general rule, conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss." *S. Fla.*

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[2] Defendant moves to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) only with respect to the elements of 18 U.S.C.A. § 1964(c), which provides the requirements for a plaintiff to have standing to pursue a civil private right of action under RICO. Apparently, some question exists as to whether a motion to dismiss under § 1964(c) is properly characterized as a 12(b)(6) motion (*i.e.* failure to state a claim upon which relief can be granted) or a 12(b)(1) motion (*i.e.* lack of jurisdiction over the subject matter). *See Moore v. PaineWebber, Inc.*, 189 F.3d 165, 169 n. 3 (2d Cir.1999) (applying 12(b)(6), but expressing belief that 12(b)(1) was more appropriate ground for dismissal). The Court appreciates the distinction between 12(b)(1) and 12(b)(6), but concludes that for the purposes of the instant Motion, an analysis under 12(b)(6) suffices.

Water Mgmt. Dist. v. Montalvo, 84 F.3d 402, 408 n. 10 (11th Cir.1996).

III. Discussion

A. Plaintiffs' Federal RICO Claim

18 U.S.C.A. § 1962(c) provides: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C.A. § 1962(c). RICO establishes both civil remedies and criminal penalties for violations of § 1962. *See* 18 U.S.C.A. §§ 1963-1964. In particular, § 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . ." 18 U.S.C.A. § 1964(c). Thus, for a plaintiff to have standing to pursue a private civil cause of action under RICO, the plaintiff must prove the following elements: (1) that the defendant violated § 1962; (2) that the plaintiff sustained an injury to his business or property; and (3) that the violation of § 1962 caused the injury. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir.1991) (citing *O'Malley v. O'Neill*, 887 F.2d 1557, 1560-61 (11th Cir.1989)). Likewise, to prevail on a civil RICO claim under § 1962(c), the plaintiff must show: (1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendant was employed by or associated with the enterprise; (4) that the defendant participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated through a pattern of racketeering activity. *United States v. Starrett*, 55 F.3d 1525, 1541 (11th Cir.1995).

18 U.S.C.A. § 1961 provides definitions for some of the terms used in § 1962(c). "Racketeering activity" includes a number of "predicate acts" that the racketeer must commit for a violation of RICO. 18 U.S.C.A. § 1961(1). Notably, violations of 8 U.S.C.A. § 1324 and 18 U.S.C.A. § 1546, the predicate acts that Plaintiffs allege Defendant committed, are among those predicate acts listed in § 1961(1). 18 U.S.C.A. § 1961(1)(B) & (F). A "pattern of racketeering activity" is defined as at least two acts of racketeering activity that occurred within ten years after the commission of a prior act of racketeering activity. 18 U.S.C.A. § 1961(5); *see Pelletier v. Zweifel*, 921 F.2d 1465, 1496 (11th Cir.1991) ("A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but unrelated predicate acts."). Section 1961 also provides that an "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C.A. § 1961(4). Likewise, a "person" liable under § 1962(c) is defined as "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C.A. § 1961(3).

Defendant contends that the Court should dismiss Plaintiffs' Complaint because: (1) the Complaint does not sufficiently allege the elements of the RICO predicate action; (2) the Complaint fails to identify a legally sufficient RICO enterprise; and (3) Plaintiffs lack standing to assert their RICO claims. The Court addresses each of those arguments in turn.

1. Sufficiency of Pleadings

a. Whether Plaintiffs Failed to Plead Predicate Acts with Particularity

As a threshold matter, the Court addresses Defendant's contention that Plaintiffs' Complaint fails to meet the heightened pleading requirements of Federal Rule of Civil Proce-

dure 9(b). When pleading a RICO action, it is well-settled that where the predicate act sounds in fraud (e.g. mail fraud, wire fraud, or securities fraud), the plaintiff must plead that predicate act with particularity as required by Federal Rule of Civil Procedure 9(b). *Byrne v. Nezhat*, 261 F.3d 1075, 1109-10 (11th Cir.2001) (mail fraud); *Republic of Panama v. BCCI Holdings (Lux.)*, 119 F.3d 935, 949 (11th Cir.1997) (wire fraud); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1380-82 (11th Cir.1997) (mail fraud and wire fraud); *Durham v. Bus. Mgmt. Assocs.*, 847 F.2d 1505, 1511-12 (11th Cir.1988) (securities fraud); *see also* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1251.1 n. 13 (citing cases finding that fraud claims brought under RICO must comply with pleading requirements of Rule 9(b)).

As the United States Court of Appeals for the Eleventh Circuit has not yet addressed whether the heightened pleading requirement of Rule 9(b) applies to RICO causes of action premised on non-fraud predicate acts, some ambiguity exists as to whether the particularized pleading requirements of Rule 9(b) apply in *all* RICO actions. *Compare Taylor v. Bear Stearns & Co.*, 572 F.Supp. 667, 682 (N.D.Ga.1983) (Forrester, J.) ("It seems, however, to this court at least that there are many sound reasons for requiring that, like fraud, [RICO] must be pled with particularity.") *and Helicopter Support Sys., Inc. v. Hughes Helicopters, Inc.*, No. 83-1450-Civ.-T-15, 1984 WL 3238, at *1 (M.D.Fla. June 22, 1984) (same) *with Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 945 F.Supp. 1355, 1380 n. 25 (D.Or.1996) (finding Rule 9(b) inapplicable where predicate acts are extortion and coercion); *and United States v. Int'l Bhd. of Teamsters*, 708 F.Supp. 1388, 1395-96 (S.D.N.Y. 1989) ("This court is not persuaded by the reasoning of the courts that have applied Rule 9(b) to RICO actions not sounding in fraud, and adopts the reasoning of courts that limit the application of Rule 9(b) to fraud based RICO

claims."); *and United States v. Bonanno Organized Crime Family of LaCosa Nostra*, 683 F.Supp. 1411, 1426-27 (E.D.N.Y.1988) (finding "no basis for extending the reach of Rule 9(b) to all RICO cases"). Those courts holding that Rule 9(b) applies in all RICO actions reason such heightened pleading is appropriate in light of the *in terrorem* effect of pleading RICO and in order to put the RICO defendant on notice of the claim against him. *See Taylor*, 572 F.Supp. at 682 ("First, the mere invocation of the statute has such an *in terrorem* effect that it would be unconscionable to allow it to linger in a suit and generate suspicion and unfavorable opinion of the putative defendant unless there is some articulable factual basis which, if true, would warrant recovery under the statute. Second, the concepts within the statute are so nebulous that if the cause of action were only generally pled, a defendant would have no effective notice of a claim showing that the pleader is entitled to relief.")

Plaintiffs urge the Court to find that the appropriate pleading standard for non-fraud RICO predicate activities is the standard provided in Rule 8(e)(1). *See* Fed. R. Civ. Proc. 8(e)(1) ("Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."). Specifically, Plaintiffs contend that the reasoning underlying *Taylor* is inapplicable in light of *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). In *Sedima,* the United States Supreme Court held that a plaintiff in a RICO action need not allege and prove that the defendant had previously been convicted under RICO. 473 U.S. at 492, 105 S.Ct. 3275. In reaching that conclusion, the Supreme Court dismissed the argument that a RICO conviction should be required to pursue a civil RICO action, stating, "[a]s for stigma, a civil RICO proceeding leaves no greater stain than do a number of other civil proceedings." *Id.* Plaintiffs urge the Court to conclude that in light of the foregoing language from *Sedima*, Rule 9(b) is limited to cases that actually involve fraud or

mistake, and does not apply in every case where the defendant claims it is stigmatized.

The Court finds Plaintiffs' reasoning persuasive, and finds that the better approach, and certainly the majority approach, is to apply the liberal pleading standards of Rule 8 to RICO actions involving non-fraud predicate activities. Additionally, the Court notes *Taylor* and *Helicopter Support Sys.* are distinguishable because the predicate activities in those cases were mail fraud and wire fraud, rather than a non-fraud predicate act.[3] Accordingly, the Court finds that where a predicate act does not sound in fraud, the plaintiff asserting a RICO claim need only comply with the general pleading requirements of Rule 8(e)(1), rather than the heightened pleading requirements of Rule 9(b).[4]

Having determined that Rule 9(b) is inapplicable in cases involving non-fraud RICO actions, the Court next addresses Defendant's argument that the predicate acts enumerated in Plaintiffs' Complaint sound in fraud, and must therefore be pled with particularity. In support of its position, Defendant cites to a string of criminal cases where courts referred to the predicate acts alleged in the instant lawsuit as "acts of fraud."

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[3] In *Helicopter Support Sys.*, the plaintiff also asserted a claim for commercial bribery. *Helicopter Support Sys.* at *1. The court found that the plaintiff failed to show that commercial bribery was a predicate offense under § 1961(1); thus, it was unnecessary to address whether that offense required heightened pleading under Rule 9(b). *Id.*

[4] Defendant's reliance on *Club Car, Inc. v. Club Car Import, Inc.* 276 F.Supp.2d 1276 (S.D.Ga.2003), is misplaced. In that case, the plaintiff was required to plead predicate acts of extortion and mail fraud with particularity simply because Local Rule 9.1 for the United States District Court for the Southern District of Georgia requires such specificity. *See* L.R.S.D. Ga. 9.1 ("All pleadings which allege violations of . . . , RICO, and other similar statutes, whether federal or state, shall specifically state each alleged violation.") This Court, however, has no such provision in its Local Rules. Consequently, the Court does not find *Club Car* applicable in this case.

See, e.g., United States v. Rodriguez-Suazo, 346 F.3d 637 (6th Cir.2003); *United States v. Thiongo*, 344 F.3d 55, 58 (1st Cir.2003); *United States v. Hendricks*, No. 99-4562, 2000 WL 341914, at *2 (4th Cir. Apr.3, 2000); *United States v. Yum*, 776 F.2d 490, 491 (4th Cir.1985). Those cases, however, do not require a finding that the predicate acts based on violations of 8 U.S.C.A. § 1324(a) and 18 U.S.C.A. § 1546 sound in fraud. The cases relied upon by Defendant involve defendants who were charged with making false representations, or conspiring to make false representations, to the federal government. By contrast, Plaintiffs do not allege that Defendant made false representations to Plaintiffs or the government; rather, Plaintiffs allege that Defendant has employed and harbored illegal workers. The predicate acts in this case consequently do not sound in fraud. Because the predicate acts in this case do not sound in fraud, the Court finds that Rule 9(b) is inapplicable to this case. Instead, Plaintiffs need only satisfy the requirements of Federal Rule of Civil Procedure 8.

The Court further notes that it has evaluated the Complaint, and finds that it satisfies the requirements set forth in Rule 8. Accordingly, the Court cannot dismiss the Complaint on the ground that Plaintiffs failed to plead the predicate acts adequately.

b. Whether Plaintiffs Failed to Allege All the Elements Required to Plead a Violation of 8 U.S.C.A. § 1324(a)(3)

Defendant also contends that Plaintiffs have failed to plead sufficiently the violation of 8 U.S.C.A. § 1324(a)(3), one of the predicate acts alleged in the Complaint. Specifically, Defendant claims that the Complaint fails to allege all the required elements of § 1324(a)(3), which provides:

> (A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens

> described in subparagraph (B) shall be fined under Title 18 or imprisoned for not more than 5 years, or both.
>
> (B) An alien described in this subparagraph is an alien who—
>
> (i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and
>
> (ii) has been brought into the United States in violation of [8 U.S.C.A. § 1324(a)].

8 U.S.C.A. § 1324(a)(3). Defendant contends that to plead a violation of § 1324(a)(3) adequately, Plaintiffs must allege that Defendant knowingly hired ten or more aliens and that Defendant *itself* brought those aliens into the United States.

In support of its position, Defendant relies on *System Management, Inc. v. Loiselle*, 91 F.Supp.2d 401 (D.Mass. 2000). The Court, however, does not agree that the holding of *Loiselle* is as limited as Defendant insists. In *Loiselle*, the defendant owner and chief executive officer of a janitorial and custodial services company was sued by two competitor corporations and four former employees. *Loiselle*, 91 F.Supp.2d at 404. The plaintiffs alleged that the defendant had violated RICO by engaging in racketeering activity including "knowingly hiring at least ten individuals with knowledge that they were 'aliens' as described in 8 U.S.C. § 1324(a)(3)(A)." *Id.* at 408. The defendant argued, and the court agreed, that the RICO claim premised on § 1324(a)(3) should be dismissed because the plaintiffs failed to allege "how the aliens entered the country or whether [the defendant] had knowledge of the purpose for which they entered." *Id.* The court reasoned that the language of § 1324(a)(3)(B)(ii) "seems to require, in order for liability to attach, that the aliens have been brought into the country by *an* employer for the purpose of illegal employment." *Id.* In other words, "the Plaintiffs must allege that [the defendant] had knowledge of how the aliens had been brought into the

United States and that they were *brought* into the United States in violation of this employment provision." *Id.* Thus, *Loiselle* holds that simple allegations that the defendant knowingly hired undocumented aliens are insufficient to state a claim under § 1324(a)(3); rather, a plaintiff must additionally allege that the defendant knew that the aliens were brought into the United States for the purpose of illegal employment. *Loiselle,* however, did not hold that the employer *itself* must have brought the aliens into the United States for a claim to arise under § 1324(a)(3). Accordingly, the Court concludes that for a plaintiff to plead a violation of § 1324(a)(3) adequately, the plaintiff must simply allege that the aliens were *brought* into the United States in violation of subsection (a), but there is no requirement that the employer must have brought the aliens into this country.

Turning to the Complaint, the Court concludes that Plaintiffs have pleaded adequately the elements of § 1324(a)(3). Specifically, Plaintiffs have alleged that Defendant has hired illegal workers knowing that those workers were "smuggled or otherwise brought" into the United States illegally. (Compl.¶ 59.) *See Mendoza v. Zirkle Fruit Co.*, No. CS-00-3024-FVS, 2000 WL 33225470, at *4 (E.D.Wash. Sept. 27, 2000) (finding "the plaintiffs have adequately pled a predicate act . . . by alleging that the defendants knew that some of their workers were unlawfully brought into the United States"). Accordingly, the Court denies Defendant's Motion to Dismiss as to this ground.

2. Enterprise

The Court next determines whether the Complaint adequately alleges the existence of a RICO enterprise. Defendant contends that Plaintiffs' Complaint fails as a matter of law to allege that a RICO enterprise existed and that the Court thus must dismiss Plaintiffs' Complaint. Specifically, Defendant claims: (1) that Plaintiffs have not and cannot allege that Defendant participated in the affairs of a RICO enter-

prise, rather than its own affairs, through the alleged immigration law violations; (2) that Plaintiffs have failed to allege a RICO enterprise distinct from Defendant; and (3) that Plaintiffs have failed to allege the existence of a common purpose and unified structure.

As explained *supra* Part III.A., a RICO "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C.A. § 1961(4), and a RICO "person" is "any individual or entity capable of holding a legal or beneficial interest in property," 18 U.S.C.A. § 1961(3). "For the purposes of [§ 1962(c)], the indictment [or complaint] must name a RICO person distinct from the RICO enterprise. The plain language of the statute requires that [those] entities be distinct." *United States v. Goldin Indus., Inc.*, 219 F.3d 1268, 1271 (11th Cir.2000) (hereinafter "*Goldin I*"). The Eleventh Circuit does not require a strict, formal association of participants; rather, "the existence of an enterprise 'is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.'" *United States v. Goldin Indus., Inc.*, 219 F.3d 1271, 1275 (11th Cir.2000) (hereinafter "*Goldin II*") (quoting *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981)). "[T]he definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation." *Id.; United States v. Elliott*, 571 F.2d 880, 897-98 (5th Cir.1978);[5] *see also United States*

[5] Opinions of the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the Eleventh Circuit, are binding precedent on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209-11 (11th Cir.1981) (en banc).

v. Hawes, 529 F.2d 472, 479 (5th Cir.1976) (recognizing that Congress gave the term "enterprise" a very broad meaning). Indeed, "a RICO enterprise may be an 'amoeba-like' structure or a loose informal association." *Avirgan v. Hull*, 932 F.2d 1572, 1578 (11th Cir.1991) (citing *United States v. Cagnina*, 697 F.2d 915, 921 (11th Cir.1983)).

Notably, the existence of an enterprise is a separate element that the plaintiff must prove—*i.e.* although a pattern of racketeering activity must be shown by pointing to evidence of the requisite number of racketeering acts by participants in the enterprise, such evidence does not necessarily establish the existence of an enterprise. *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524. Indeed, "[t]he 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart form the pattern of activity in which it engages." *Id.* Nevertheless, the Eleventh Circuit recognizes that "under our case law, a RICO enterprise need not possess an 'ascertainable structure' distinct from the associations necessary to conduct the pattern of racketeering activity." *Goldin II*, 219 F.3d at 1274-75 (quoting *United States v. Weinstein*, 762 F.2d 1522, 1537 n. 13 (11th Cir.1985)).

In support of its position that the Complaint fails to allege the existence of an enterprise adequately, Defendant relies heavily on a similar opinion issued by the Seventh Circuit, *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir.2004). In *Baker*, unionized current and former employees of one of the defendant's meat-processing plants filed a class action lawsuit on behalf of all current and former hourly employees at that plant who were authorized to work in the United States. *Baker*, 357 F.3d at 686. Specifically, the complaint in *Baker* alleged that nearly half of the employees at the defendant's plant were aliens who were unauthorized to work legally in the United States. *Id.* The plaintiffs claimed that the defendant turned a blind eye to bogus identification documents, alerted its illegal workers when immigration officials were

about to conduct inspections, and paid recruiters to smuggle captured illegal workers back into the United States for re-employment under pseudonyms. *Id.* at 687. The complaint further alleged that the defendant had arrangements with immigrant welfare organizations, who referred known undocumented aliens to the defendant for employment. *Id.* Plaintiffs alleged that as a result of that activity, wages at the defendant's plant were depressed compared with what the defendant would have had to pay if the labor pool consisted only of persons legally authorized to work in the United States. *Id.*

In affirming the district court's dismissal of the complaint, the Seventh Circuit first concluded that the union representing the plaintiffs was the proper representative with respect to the wages issue rather than the employees individually. The court also concluded that "there [was] another fatal problem in [the] complaint: specification of the 'enterprise.'" *Baker*, 357 F.3d at 691. The complaint alleged that the "enterprise" was the defendant plus the persons and organizations who assisted the defendant in recruitment of illegal workers. The court first noted that the complaint came "perilously close to alleging that [the defendant] plus its agents and employees is the 'enterprise,' a theory that won't fly." *Id.* (citing *Bucklew v. Hawkins, Ash, Baptie & Co.*, 329 F.3d 923, 934 (7th Cir.2003)).

The court also found that the complaint was flawed for failure to identify a common purpose: "it is not altogether clear how this 'association in fact' has a common purpose, an essential ingredient." *Id.* (citing *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524). The court took a conservative reading as to whether the members of the "association in fact," had a common purpose concluding that their goals were divergent because the defendant wanted to pay lower wages, the recruiters wanted to be paid for their recruitment services, and the immigrant welfare organizations wanted to assist mem-

bers of the ethnic group. *Id.* Consequently, the court found that no common purpose existed. *Id.*

Finally, the *Baker* court found that the plaintiffs failed to allege that the defendant operated or managed the purported enterprise through a pattern of racketeering. *Baker*, 357 F.3d at 692. The court explained that the complaint was insufficient because "[t]he nub of the complaint [was] that [the defendant] operate[d] itself unlawfully—it is [the defendant] that supposedly hires, harbors, and pays the unlawful workers, for the purpose of reducing its payroll." *Id.* at 361. Specifically, the court stated that "[the defendant] does not manage or operate some other enterprise by violating [8 U.S.C.A. § 1324]; the complaint does not allege—and on appeal plaintiffs do not seek an opportunity to show—that [the defendant] ha[d] infiltrated, taken over, manipulated, disrupted, or suborned a distinct entity or even a distinct association in fact." *Id.* The Court therefore found that the plaintiffs failed to allege that the defendant operated an enterprise through a pattern of racketeering activity. *Id.*

Turning to the instant case, the Court first considers Defendant's argument that Plaintiffs have failed to allege that Defendant operated or participated in the affairs of an enterprise through a pattern of racketeering activity. Specifically, Defendant contends that Plaintiffs have failed to allege that Defendant, through its allegedly illegal conduct, operated or participated in the affairs of an "association in fact" as opposed to Defendant's own affairs. In support of its position, Defendant points to various paragraphs in the Complaint that allege that Defendant, as opposed to the purported enterprise, harbored and employed illegal workers in order to reduce the cost of its workforce. (*See Compl.* ¶¶ 3, 14, 16-18, 59-61; 63-64, 67.)

In response, Plaintiffs argue that the Complaint alleges that Defendant "participates in the affairs of an enterprise that transcends [Defendant] itself and that consists of [Defendant]

and various other persons and entities." (Def. Br. Resp. at 7 (emphasis deleted).) Specifically, Plaintiffs point to the following language in the Complaint:

> Mohawk has engaged in an open and ongoing pattern of violations of 8 U.S.C. § 1324 and 18 U.S.C. § 1546 during the last five years through its participation in an association-in-fact enterprise with third party employment agencies and other recruiters, including Temporary Placement Services ("TPS"), that supply Mohawk with illegal workers. Each recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment needs by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

(Compl.¶ 76.) Plaintiffs maintain that given the nature of an association-in-fact enterprise, it is to be expected that the defendant will be engaged in the management of its own affairs—what is most important, however, is that the defendant also participates in the affairs of an enterprise.

Defendant correctly asserts that "liability 'depends on showing that the defendants conducted or participated in the conduct of the enterprises's affairs, not just their own affairs.'" *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001) (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993)) (internal quotation omitted) (em-

phasis deleted). The Eleventh Circuit has nevertheless recognized that "the definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate acts." *Goldin II*, 219 F.3d at 1275; *Weinstein*, 762 F.2d at 1537. Here, the Complaint alleges that Defendant participated in the conduct of an enterprise's affairs by paying recruiters for illegal workers and by maintaining a formal relationship with TPS, and that those parties, as an association-in-fact, provided the means for the commission of a number of immigration law violations. Consequently, the Court finds that Plaintiffs' Complaint sufficiently alleges that Defendant operated or participated in the affairs of an enterprise through a pattern of racketeering activity.

The Court next addresses whether Plaintiffs have failed to allege an enterprise distinct from Defendant itself. Although the Complaint clearly alleges that the other members of the alleged enterprise are independent third parties rather than employees or agents of Defendant (Compl.¶ 76.), Defendant urges the Court to follow *Baker,* and to find that the Complaint fails to allege the existence of an enterprise.

At this stage in the litigation, however, the Court need only determine whether the Complaint sufficiently alleges the existence of an enterprise separate from Defendant. After consideration of the allegations in the Complaint, the Court concludes that for the purposes of this Motion to Dismiss, Plaintiffs have adequately alleged that the recruiters are separate and independent entities from Defendant. Whether the third party recruiters are in fact agents of Defendant is a factual issue, but for the purposes of the instant Motion Plaintiffs have met their burden to allege that the association-in-fact enterprise consisted of Defendant and separate entities. *See Cedric Kushner Promotions*, 533 U.S. at 164, 121 S.Ct. 2087 (citing *Riverwoods Chappaqua Corp. v. Marine Mid-*

land Bank, N.A., 30 F.3d 339, 344 (2d Cir.1994)); *In re Managed Care Litig.*, 298 F.Supp.2d 1259, 1276-77 (S.D.Fla.2003) (finding complaint sufficiently alleged control and participation in association-in-fact enterprise). *Cf. Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir.1997) ("[W]here a large, reputable manufacturer deals with its dealers and other agents in the ordinary way, so that their role in the manufacturer's illegal acts is entirely incidental, differing not at all from what it would be if these agents were the employees of a totally integrated enterprise, the manufacturer plus its dealers and other agents . . . do not constitute an enterprise within the meaning of [RICO]."). Accordingly, the Court cannot conclude that Plaintiffs have failed to allege the existence of an enterprise district from Defendant itself.

Defendant next argues that Plaintiffs have failed to allege the existence of an enterprise because the Complaint does not adequately allege the existence of a common purpose among the members of the association-in-fact. Specifically, Defendant claims that rather than alleging a common purpose between Defendant and the recruiters, Plaintiffs' Complaint indicates that the members of the purported enterprise had divergent goals and purposes. (*See* Compl. ¶ 22 ("Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.").) Defendant therefore contends that as a matter of law, no enterprise exists. Defendant cites to the following language in *Baker* in support of its argument: "[the employer] wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less); and the [immigrant welfare organizations] want [ ] to assist members of [their] ethnic group." *Baker* 357 F.3d at 691. Thus, because the members of the enterprise have divergent goals, Defendant concludes that no association-in-fact enterprise exists.

Plaintiffs respond that in this case, the members of the enterprise indeed share a common purpose namely, "the common purpose of obtaining illegal workers for employment by Mohawk." (Compl.¶ 77.) Moreover, Plaintiffs maintain that no authority exists in the Eleventh Circuit for the proposition that divergent individual goals of persons in a purported association-in-fact enterprise precludes the existence of such enterprise as a matter of law.

The Eleventh Circuit takes a broad approach as to what qualifies as an enterprise. *See United States v. Hewes*, 729 F.2d 1302, 1310-12 (11th Cir.1984) (upholding jury determination that "'informal, de facto association' existed among the defendants that united them in the common purpose of making money from repeated criminal activity") (quoting *Elliott*, 571 F.2d at 898); *Cagnina*, 697 F.2d at 921-922 (finding evidence sufficient to support jury's finding of enterprise where common purpose of making money existed). Because the Complaint in this case explicitly alleges that a common purpose exists—obtaining illegal workers for employment by Defendants—the Court cannot agree with Defendant that Plaintiffs' Complaint is deficient.

In sum, the Court finds that the Complaint adequately sets forth allegations concerning the existence of an enterprise. Specifically, Plaintiffs have sufficiently alleged that Defendant participated in the affairs of a RICO enterprise as opposed to its own affairs, that a RICO enterprise exists distinct from Defendant, and that a common purpose and unified structure exists among the participants in the purported enterprise. Consequently, the Court denies Defendant's Motion to Dismiss on the ground that the Complaint fails to allege the existence of an enterprise.

3. Standing Under RICO

Defendant also argues that Plaintiffs do not have standing to sue because (1) Plaintiffs failed to allege injury to a con-

crete interest in business or property; and (2) Plaintiffs can not show that Defendant's alleged violations of 8 U.S.C.A. § 1324 proximately caused Plaintiffs' injuries. The Court discusses each of those arguments in turn.

a. Whether Plaintiffs Have Alleged Injury to their "Business or Property"

The Court turns first to whether Plaintiffs have alleged an injury to their business or property. Defendant argues that each Plaintiff accepted employment with Defendant at an agreed-upon wage rate, and that Plaintiffs cannot allege an injury to their business or property because Defendant paid each Plaintiff in accordance with those wage rates. In other words, Defendant claims that because it compensated Plaintiffs as the parties agreed, no injury has occurred, and Plaintiffs thus lack standing to pursue this action.

The Court cannot agree that as a matter of law Plaintiffs have failed to allege an injury to their business or property. The premise of Defendant's argument is that Defendant and Plaintiffs were able to bargain freely on a fair wage rate; however, assuming that Plaintiffs have been injured by reason of Defendant's alleged racketeering activities, the presence of illegal workers in the labor pool adversely has affected Plaintiffs' ability to command higher wage rates. In other words, if Plaintiffs are correct regarding issues of causation, Plaintiffs had no power to command higher wage rates due to the influx of illegal workers. Consequently, Plaintiffs' acceptance of lower wages could not act as a waiver of their alleged injuries. *See Mendoza*, 301 F.3d at 1168 n. 4. ("[W]hat is required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes."). Thus, the Court cannot agree with Defendant that Plaintiffs have failed, as a matter of law, to allege an injury to Plaintiffs' business or property. The Court therefore cannot find that Plaintiffs lack standing based on this argument.

b. Whether Plaintiffs Have Alleged Injury "By Reason of" a Violation of § 1962(c)

Defendant further argues that Plaintiffs have not alleged an injury "by reason of" a violation of § 1962(c) and that Plaintiffs consequently cannot show that Defendant's alleged violations caused Plaintiffs' injuries. Section 1964(c) requires a plaintiff to show that he sustained injury "by reason of" the defendant's violation of § 1962. The Supreme Court, in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992), held that the "by reason of" language of § 1964(c) requires a showing of both direct and proximate causation. 503 U.S. at 268-69, 112 S.Ct. 1311. "In order for a pattern of racketeering activity to be a cognizable cause of civil RICO injury to a private plaintiff, one or more of the predicate acts must not only be the 'but for' cause of the injury, but the proximate cause as well." *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1307 (11th Cir.2003) (citing *Holmes*, 503 U.S. at 268, 112 S.Ct. 1311). Thus, for a plaintiff to have standing under RICO, he must allege and prove that "'his injury flowed directly from the commission of the predicate acts.'" *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 906 (11th Cir.1998) (quoting *Pelletier*, 921 F.2d at 1499).

In analyzing whether a plaintiff has adequately alleged an injury "by reason of" a violation of § 1962(c), the Supreme Court in *Holmes* recognized that "'the infinite variety of claims that may arise make it virtually impossible to announce a black-letter rule that will dictate the result in every case.'" *Holmes*, 503 U.S. at 272 n. 20, 112 S.Ct. 1311 (quoting *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 536, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983) (footnote omitted)). Thus, "use of the term 'direct' should merely be understood as a reference to the proximate-cause enquiry that is informed by

the [policy] considerations set out in the text [of the *Holmes* opinion]." *Id.* In conducting proximate cause analysis under RICO, a court must therefore consider the following policy considerations on a case-by-case basis: (1) whether other parties are in a more suitable position to vindicate the law—*i.e.* whether the plaintiff is the direct victim of the alleged illegal conduct; (2) whether the court can identify a method to apportion possible recoveries; and (3) whether the damages alleged by the plaintiff are too speculative, that is, whether the court has the ability to identify what portion of the plaintiff's damages arose from the defendant's alleged RICO violations as opposed to other independent conditions. *Id.* at 273, 112 S.Ct. 1311.

In its Motion to Dismiss, Defendant first contends that Plaintiffs cannot show, and thus cannot allege, that Plaintiffs are the direct victims of Defendant's alleged wrongdoing, and that Plaintiffs consequently are not the best-suited persons to maintain this action. Defendant next contends that Plaintiffs' theory of damages is simply too speculative to support a finding that Defendant's conduct proximately caused Plaintiffs' injuries.[6] The Court addresses each of those arguments in turn.[7]

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[6] Defendant does not contend that other parties are better-situated to vindic- .e the aims of RICO. Because the Court concludes that Plaintiffs' injuries, as alleged, are not derivative of injury to a third party, the Court sees no reason why a party other than Plaintiffs should instead pursue this action.

[7] As an initial matter, the Court addresses Defendant's argument that Plaintiffs have standing as to pursue their federal RICO action only as to the predicate act of employing illegal workers. Specifically, Defendant claims that because Plaintiffs cannot show that the predicate acts of harboring and transporting illegal aliens and the use and acceptance of fraudulent documents caused injury to Plaintiffs, Plaintiffs lack standing with respect to those predicate acts.

The Eleventh Circuit has stated that "[i]f no injury flowed from a particular predicate act, no recovery lies for the commission of that act."

i. Direct Injury

In the instant action, Defendant first claims Plaintiffs lack standing because the legally authorized hourly workers constituting the putative class are not the direct victims of Defendant's alleged pattern of racketeering activity—*i.e.* Plaintiffs are not the best persons to vindicate RICO. Defendant relies primarily on *Holmes* for the proposition that where a plaintiff's injury is derived from a direct injury to a third party, that plaintiff lacks standing to bring an action pursuant to RICO for such "passed-on" injury. Defendant argues that Plaintiffs are not the "first victims" of Defendant's alleged immigration law violations; rather, the direct victims are the undocumented aliens who, because of their status, cannot command equal wages or enjoy equal benefits, such as workers' compensation.

Plaintiffs cite *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir.2002), in which the Ninth Circuit found that a putative class of legal hourly workers had standing to bring a RICO action against two agricultural companies that had

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Pelletier, 921 F.2d at 1497-98 (finding no standing as to predicate act of bankruptcy fraud where predicate act actually benefitted plaintiff). However, "a wrongful act 'is a proximate cause if it is a substantial factor in the sequence of reasonable causation.'" *Maiz v. Virani*, 253 F.3d 641, 675 (11th Cir.2001) (quoting *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1399 (11th Cir.1994)) (internal quotation marks omitted). Thus, while a predicate act may not be a "but for" cause of a plaintiff's injuries, the plaintiff may nevertheless have standing to pursue a RICO claim where that predicate act was a substantial factor "in perpetuating [the racketeer's] scheme and in causing significant injury to [the plaintiff]." *Id.*

With respect to the predicate acts of harboring and inducing illegal aliens and the use and acceptance of bogus identification documents, the Court cannot conclude at this point that those predicate acts do not constitute substantial factors in causing injury to Plaintiffs. Accordingly, the Court concludes that Plaintiffs do not lack standing to claim that those predicate acts proximately caused their injuries.

allegedly hired illegal workers, thereby depressing the wages paid to documented workers. 301 F.3d at 1166. Like Defendant in the instant matter, the defendants in *Mendoza* urged the court to find that the plaintiffs were not the "first victims" of the alleged illegal conduct. The court in *Mendoza* concluded that because the defendants engaged in illegal conduct to gain "disproportionate bargaining power in employment contracts" with their workers, the legal, documented employees were the direct victims of the defendants' illegal conduct. Because "the [illegal conduct] had the purpose and direct result of depressing the wages paid to [the documented employees] by the growers," the court could not "discern a more direct victim of the illegal conduct." *Id.* at 1170. The court further explained: "Neither the government nor the undocumented workers are an intervening third party in this scheme, despite the [defendants'] arguments to the contrary." *Id.*

Plaintiffs also rely on *Commercial Cleaning Services, LLC v. Colin Service Systems, Inc.*, 271 F.3d 374 (2d Cir.2001), in which the Second Circuit held that the plaintiffs, who were competitors of the defendant, adequately stated a direct proximate relationship between their injuries and the defendant's alleged illegal conduct. 271 F.3d at 381. In that case, a cleaning service brought a RICO class action, alleging that the defendant, also a cleaning service, hired undocumented aliens in violation of 8 U.S.C.A. § 1324, thereby driving down the defendant's cost of employment. *Id.* at 378. The plaintiff claimed that the defendant's illegal conduct allowed the defendant to charge lower prices for its services, thereby undercutting its competition. *Id.*

The *Commercial Cleaning* court applied the *Holmes* policy considerations, and found that the plaintiffs had suffered direct injury due to the defendant's alleged racketeering activity. *Commercial Cleaning*, 271 F.3d at 385. Specifically, the Second Circuit reasoned that no class of persons would

"have a greater incentive to ensure that a RICO violation does not go undetected or unremedied, and whose recovery would cure the loss suffered by there plaintiffs." *Id.*

The Court finds *Mendoza* persuasive, and applies the *Mendoza* court's reasoning to this case. Here, Plaintiffs clearly allege that their injury is the result of Defendant's attempt to gain a commercial advantage over the employment of its workforce, which directly causes harm to Plaintiffs. Accordingly, the Court finds that the Complaint alleges a direct injury to Plaintiffs. Plaintiffs therefore do not lack standing based on the failure to allege a direct injury.

ii. Speculative Nature of Damages

The Court next considers whether the damages theory alleged in Plaintiffs' Complaint is too speculative to permit Plaintiffs to have standing to pursue their claims. Defendant sets forth a number of arguments in support of its position that the calculation of damages is exceedingly tenuous and speculative. Specifically, Defendant claims that there are numerous other factors that could affect Plaintiffs' wages, such as the demand for labor in the relevant market, the supply of qualified workers, the overall profitability of the industry, and the status of the local, state, national, and international economies.

Defendant also submits that Plaintiffs have failed to allege that Defendant employs a sufficient number of illegal workers or has such a large presence in the labor market to support a conclusion that any pay discrepancies can be attributed to Defendant's allegedly illegal conduct. In particular, Defendant contends that Plaintiffs' allegation that Defendant has assisted "hundreds" of illegal workers is insufficient as a matter of economic sense to cause depressed wages. (*See* Compl. ¶ 61.) Defendant further submits that if it were paying depressed wages to its employees, Plaintiffs could simply seek employment elsewhere.

Defendant also claims that *Mendoza* is distinguishable because the defendants in that case enjoyed market power sufficient to give them the power to "define wages in this labor market, akin to a monopsony or oligopsony." *Mendoza*, 301 F.3d at 1171. Defendant maintains that Plaintiffs have not, and cannot, allege that Defendant has such market power to dictate unilaterally the labor market. Thus, Defendant contends that it is too speculative to gauge the difference between the current level of compensation and the level of compensation that would have existed but for Defendant's alleged illegal conduct.

At this stage in the litigation, however, the Court cannot agree that the damages attributable to Plaintiffs' RICO claims are so tenuous and speculative that the Court should dismiss the Complaint for lack of standing. Simply put, at this point, the Court cannot say that as a matter of law, Plaintiffs have failed to establish that Defendant's alleged RICO violations were the proximate cause of Plaintiffs' depressed wages. Of course, after some discovery it may appear that Plaintiffs' theory is too speculative. At this early juncture, however, the Court cannot dismiss the Complaint for lack of standing on this ground.

iii. Summary

In sum, the Court denies Defendant's Motion to Dismiss on the grounds that Plaintiffs lack standing under RICO to pursue their claims. Specifically, the Court finds that Plaintiffs have sufficiently alleged an injury to their "business or property" and that such injury was proximately caused by Defendant's allegedly illegal conduct. The Court next addresses Defendant's arguments in support of dismissal of Plaintiffs' state law claims.

B. Plaintiffs' Georgia RICO Claims

Plaintiffs' Complaint also includes claims for violations of Georgia RICO, O.C.G.A. § 16-14-4(a) & (c). (Compl.¶¶ 93-105). Defendant contends that Plaintiffs' Georgia RICO claims fail as a matter of law because Defendant, as a corporation, is incapable of violating that statute.

The Eleventh Circuit has recognized that "[u]nder Georgia law, a corporation *qua* corporation, cannot be held to answer for a crime, and therefore could not violate the Georgia RICO statute." *Byrne v. Nezhat*, 261 F.3d 1075, 1105 (11th Cir.2001) (citing *Cobb County v. Jones Group*, 218 Ga.App. 149, 153, 460 S.E.2d 516, 521 (1995)). "This is not to say that a corporation may disregard the law with impunity. If a crime has been committed, the agents of the corporation who are responsible are subject to prosecution." *Id.*

Because RICO predicate acts are actually criminal offenses, O.C.G.A. § 16-2-22, entitled "Criminal responsibility of corporations," applies when determining whether a corporation is vicariously liable for the actions of its employees. O.C.G.A. § 16-2-22; *Cobb County*, 218 Ga.App. at 153, 460 S.E.2d at 521. Section 16-2-22 provides that a corporation may be prosecuted for a criminal act or omission only if:

> (1) The crime is defined by a statute which clearly indicates a legislative purpose to impose liability on a corporation, and an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his office or employment and in behalf of the corporation; or
>
> (2) The commission of the crime is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a managerial official who is acting within the scope of his employment in behalf of the corporation.

O.C.G.A. § 16-2-22(a)(1) & (2).

Defendant first contends that Plaintiffs cannot pursue a Georgia RICO action under § 16-2-22(a)(1) because nowhere in the Georgia RICO statute does any indication of legislative purpose to impose liability on a corporation exist.

The weight of authority supports Defendant's argument. *See Clark v. Sec. Life Ins. Co. of Am.*, 270 Ga. 165, 167 n. 11, 509 S.E.2d 602, 604 n. 11 (1998) ("A corporation may also face prosecution under O.C.G.A. § 16-2- 22(a)(1) for a crime if the statute defining the crime clearly indicates a legislative purpose to impose liability on a corporation. RICO, however, in not such a statute because O.C.G.A. § 16-4-4 prohibits only 'persons' from engaging in racketeering activity."); *Cobb County,* 218 Ga.App. at 153, 460 S.E.2d at 521 ("'RICO does not contain in its definition any indication of a legislative purpose to impose criminal liability on a corporation.'") (quoting incorporated language of trial court's order). Accordingly, the Court concludes that because the Georgia RICO statute does not expressly and clearly indicate a legislative purpose to impose liability on a corporation for violations of the statute, Plaintiffs cannot avail themselves of § 16-2-22(a)(1) to impose liability for Georgia RICO violations on Defendant.

Notwithstanding the inapplicability of § 16-2-22(a)(1), the Court finds that Plaintiffs may pursue their Georgia RICO claims against Defendant under § 16-2-22(a)(2). As the Georgia Supreme Court held: "criminal liability will attach to the employer for the acts of the employee only if the 'crime is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a managerial official who is acting within the scope of his employment in behalf of the corporation.'" *Clark*, 270 Ga. at 167, 509 S.E.2d at 604 (quoting O.C.G.A. § 16-2-22(a)(2).) It is not fatal to Plaintiffs' Complaint that they have not alleged that Defendant's board of directors or any corporate officers acting within the scope of employment authorized, requested, commanded,

performed, or recklessly tolerated violations of Georgia RICO. On the contrary, such facts are a matter of proof; thus, Plaintiffs simply must set forth the necessary proof at trial. *State v. Military Circle Pet Ctr., No. 94, Inc.*, 257 Ga. 388, 389-90, 360 S.E.2d 248, 249 (1987) ("Although the state must prove the applicable provisions of [§ 16-2-22(a)(2)] at trial against a criminal defendant, it is not necessary that the state allege these provisions in the accusation."). At this point, therefore, the Court cannot hold that Plaintiffs' Georgia RICO claims fail as a matter of law for failure to name any managerial official, officer, or similar person of Defendant who would satisfy the requirements of § 16-2-22. Accordingly, the Court denies Defendant's Motion to Dismiss with respect to Plaintiffs' Georgia RICO claims.[8]

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[8] Defendant also contends that Plaintiffs' Georgia RICO claims fail because Plaintiffs' Complaint fails to allege that violations of 8 U.S.C.A. § 1324 constituted "racketeering activity" for purposes of Georgia RICO. (*See* Compl. ¶ 62 ("Each violation of 8 U.S.C. § 1324 constitutes an act of 'racketeering activity' under [federal RICO], 18 U.S.C. § 1961(F) [sic].").) Plaintiffs respond that Defendant has misread the Complaint, but nonetheless request leave to amend their Complaint to clarify that their Georgia RICO claims are indeed predicated on violations of § 1324.

The Court agrees with Defendant that Plaintiffs' Complaint does not state a cause of action under Georgia RICO with respect to violations of § 1324, but for a different reason than that advanced by Defendant. O.C.G.A. § 16-14-3(9)(A)(xxix) defines "racketeering activity" as including "[a]ny conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)." O.C.G.A. § 16-14-3(9)(A)(xxix). That definition of racketeering activity, however, does not include those acts falling under § 1961(1)(F). Violations of § 1324 appear in subsection (F), thus acts violating § 1324 cannot qualify as predicate acts for purposes of Georgia RICO. Accordingly, the Court finds that Plaintiffs' Complaint can only allege a claim based on Georgia RICO as to 18 U.S.C.A. § 1546. The Court denies Plaintiffs' request to amend their Complaint to clarify that Plaintiffs' Georgia RICO claims are predicated on violations of § 1324 as futile.

C. Plaintiffs' Unjust Enrichment Claim

Finally, the Court addresses whether Plaintiffs have stated a claim for unjust enrichment arising under Georgia law (Compl.¶¶ 106-110). Specifically, Plaintiffs claim that Defendant's illegal conduct permits Defendant "to reap substantial wage savings" because Defendant pays Plaintiffs lower wages than what Defendant would otherwise be forced to pay. (*Id.* ¶ 107). Plaintiffs also claim that Defendant has been unjustly enriched because the hiring of illegal workers has led to a reduced number of worker's compensation claims; therefore, Defendant retains money it otherwise would have to spend on responding to worker's compensation claims. Plaintiffs further allege that Defendant, through the employment of illegal workers and at the expense of Plaintiffs, enjoys larger profits than Defendant would earn if it used legal, authorized workers. (*Id.* ¶ 109.) Consequently, Plaintiffs claim that Defendant has been unjustly enriched, and that the Court should order Defendant "to disgorge its unlawful profits or otherwise return the full amount of any wage savings and worker's compensation savings that are the direct and proximate result of [Defendant's] unlawful conduct." (*Id.* ¶ 110.)

Unjust enrichment has been defined in the following manner:

> The concept of unjust enrichment in law is premised upon the principle that a party cannot induce, accept, or encourage another to furnish or render something of value to such party and avoid payment for the value received; otherwise the party has been unjustly enriched at the expense of another and, in fairness and good conscience, must reimburse the other to the extent of the value conferred. Inherent in unjust enrichment is the requirement that the receiving party knew of the value

> being bestowed upon them by another and failed to stop the act or to reject the benefit.

Reidling v. Holcomb, 225 Ga.App. 229, 232, 483 S.E.2d 624, 626 (1997); *see also* Larkins, Ga. Contracts, § 12-3 (discussing generally unjust enrichment remedy). Recovery under a theory of unjust enrichment "presupposes the absence of a contractual agreement." *Fed. Ins. Co. v. Westside Supply Co.*, 264 Ga.App. 240, 248, 590 S.E.2d 224, 232 (2003) (citing *Ga. Tile Distribs., Inc. v. Zumpano Enters., Inc.*, 205 Ga.App. 487, 488, 422 S.E.2d 906 (1998)). "'The measure of damages under . . . unjust enrichment is based upon the benefit conferred upon the [recipient] and not the cost to render the service or cost of the goods.'" *Hollifield v. Monte Vista Biblical Gardens, Inc.*, 251 Ga.App. 124, 130-31, 553 S.E.2d 662, 669 (2001) (addition supplied) (quoting *Zampatti v. Tradebank Int'l Franchising Corp.*, 235 Ga.App. 333, 340, 508 S.E.2d 750 (1998)).

Defendant contends that Plaintiffs' unjust enrichment claim fails because Plaintiffs accepted employment at an agreed-upon rate. Plaintiffs have not alleged that Defendant failed to compensate Plaintiffs in accordance with that rate.[9] In other words, Defendant submits that unjust enrichment is inapplicable where an express contract exists for payment of an item or service, and the defendant avoids payment for that item or service. Defendant notes that in this case, the parties entered into a contract for a certain wage rate and Defendant paid wages in accordance with that contract. At this point in the litigation, however, the Court cannot agree that as a matter of law Defendant has been unjustly enriched by suppressing Plaintiffs' wages. Accordingly, the Court denies Defendant's Motion to Dismiss as to Plaintiffs' unjust en-

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[9] This argument is similar to Defendant's argument with respect to whether Plaintiffs alleged an injury to their business or property. *See supra* Part III.A.3.a.

richment claim as it relates to Defendant's savings in employing Plaintiffs at a diminished wage rate.

The Court notes, however, that Plaintiffs cannot base their claim of unjust enrichment on Defendant's alleged savings with respect to worker's compensation claims. Defendant argues, and the Court agrees, that Plaintiffs lack standing to assert a claim of unjust enrichment as to the amount of money Defendant did not have to spend in dealing with worker's compensation claims. Essentially, the Complaint alleges that because illegal workers tend to refrain from filing worker's compensation claims, and because Defendant consequently spent less money dealing with worker's compensation claims, Defendant enjoyed higher profitability. The Court cannot fathom how higher profit margins due to lower worker's compensation costs are connected in any way to Plaintiffs' receiving lower wages. That is to say, Plaintiffs' labor in no way caused lower worker's compensation costs. Consequently, the Court finds that Plaintiffs cannot claim unjust enrichment as to worker's compensation claims.

IV. Conclusion

ACCORDINGLY, the Court *DENIES IN PART* and *GRANTS IN PART* Defendant's Motion to Dismiss [25]. Specifically, the Court *DENIES* Defendant's Motion to Dismiss as to all Federal and Georgia RICO allegations in Plaintiff's Complaint, *DENIES* Defendant's Motion to Dismiss as to Plaintiffs' unjust enrichment claim as it relates to Defendant's wage savings in employing Plaintiffs at a diminished wage rate, and *GRANTS* Defendant's Motion to Dismiss as to Plaintiff's unjust enrichment claim as it relates to Defendant's savings with respect to worker's compensation claims.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

[Filed Aug. 18, 2005]

CIVIL ACTION FILE
NO. 4:04-CV-0003-HLM

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs,

v.

MOHAWK INDUSTRIES, INC.,
Defendant.

ORDER

This is a class action alleging violations of the federal and Georgia Racketeer Influenced Corrupt Organizations Acts ("RICO"). The case is before the Court on Plaintiffs' Motion to Lift the Stay of Discovery [61] and Defendant Mohawk Industries, Inc.'s Motion to Continue the Stay of Discovery Pending its Petition for Certiorari [62].

I. Background

On January 6, 2004, Plaintiffs filed this lawsuit. Plaintiffs are current and former hourly employees of Defendant who claim that Defendant's alleged employment and harboring of illegal aliens has depressed their wages. Plaintiffs assert the following claims: (1) a claim that Defendant's conduct violates 18 U.S.C.A. § 1962(c) (Compl. ¶¶ 88-92); (2) a claim that Defendant's conduct violates O.C.G.A. § 16-14-4(a) (*id.* ¶¶ 93-98); (3) a claim that Defendant's conduct violates

O.C.G.A. § 16-14-4(c) (*id.* ¶¶ 99-105); and a claim for unjust enrichment arising under Georgia law (*id.* ¶¶ 106-110). Plaintiffs also seek certification of a class pursuant to Federal Rule of Civil Procedure 23. (*Id.* ¶ 46.)

On February 9, 2004, Defendant filed a Motion to Dismiss. Defendant requested that the Court dismiss Plaintiffs' federal and state RICO claims. Defendant also requested that the Court decline to exercise its pendent jurisdiction over Plaintiffs' state law claims.

On April 12, 2004, the Court granted in part and denied in part Defendant's Motion to Dismiss. (Order of Apr. 12, 2004.) The Court denied the Motion to Dismiss with respect to Plaintiffs' federal and Georgia RICO claims and with respect to Plaintiff's unjust enrichment claim relating to Defendant's wage savings in employing Plaintiffs at a reduced rate, but granted the Motion to Dismiss with respect to Plaintiffs' unjust enrichment claim relating to Defendant's savings with respect to workers' compensation claims. (*Id.*)

On May 27, 2004, the Court granted Defendant's request to certify its April 12, 2004, Order for an interlocutory appeal. (Order of May 27, 2004.) The Court also stayed discovery pending resolution of the interlocutory appeal. (*Id.*)

On June 9, 2005, the United States Court of Appeals for the Eleventh Circuit entered an Order affirming in part and reversing in part the Court's ruling on the Motion to Dismiss. The Eleventh Circuit affirmed the Court's decision with respect to Plaintiffs' RICO claims, but reversed the Court's denial of the Motion to Dismiss with respect to Plaintiffs' unjust enrichment claims based on Defendant's wage savings in employing Plaintiffs at a reduced rate.

Defendant filed a petition for rehearing en banc with the Eleventh Circuit. On July 29, 2005, while that petition remained pending before the Eleventh Circuit, Plaintiffs filed a Motion to Lift the Stay of Discovery in this Court.

On August 8, 2005, the Eleventh Circuit denied Defendant's petition for rehearing en banc. On August 11, 2005, Defendant filed a Motion to Continue the Stay of Discovery Pending its Petition for Certiorari.

On August 16, 2005, the Eleventh Circuit issued its mandate in the case. On August 18, 2005, the Eleventh Circuit returned the record on appeal to the Court. The case now has returned to the Court, and the interlocutory appeal proceedings have concluded. Because the interlocutory appeal proceedings have concluded, Plaintiffs' Motion to Lift the Stay of Discovery is moot. The Court, however, still must decide whether to issue a second stay of discovery pending the resolution of Defendant's petition for a writ of certiorari to the United States Supreme Court.

II. Discussion

Defendant has requested that the Court stay discovery in this case pending the resolution of Defendant's forthcoming petition for a writ of certiorari to the Supreme Court. Defendant states that if the Court grants the requested stay of discovery, Defendant will file its petition for a writ of certiorari on an expedited basis, and the Supreme Court will likely decide whether to grant the petition by the end of the year. Defendant argues that a further, modest delay of discovery would not prejudice Plaintiffs in the event that the Supreme Court denies the petition. Alternatively, Defendant notes a stay of discovery will conserve the resources of the parties and the Court in the event that the Supreme Court grants certiorari and ultimately dismisses Plaintiffs' federal RICO claim.

Not surprisingly, Plaintiffs oppose Defendant's Motion. Plaintiffs observe that Defendant "has failed three times in its bid to dismiss plaintiffs' RICO claims." (Pls.' Opp'n Def.'s Mot. Stay Discovery at 1.) Plaintiffs contend that Defendant is moving for the entry of a new stay, and that Defendant is

not entitled to such extraordinary relief. Plaintiffs assert that Supreme Court review is highly improbable in this case, and that Defendant therefore has no realistic chance of avoiding discovery altogether in this case. In particular, Plaintiffs argue that the Supreme Court almost certainly will not review the proximate cause issue asserted by Defendant, and that review of Plaintiffs' Georgia RICO claim consequently is improbable. Plaintiffs therefore contend that Defendant "has no realistic chance of avoiding plaintiffs' Georgia RICO claim," and that "there is virtually no chance that class discovery conducted while [Defendant] is petitioning for certiorari will be in vain." (*Id.* at 5.)

While the Court understands and appreciates Plaintiffs' arguments and Plaintiffs' confidence in their legal positions and the rulings of the Eleventh Circuit and this Court, the Court cannot agree that Supreme Court review of this case is "highly improbable." As the Court noted in its May 27, 2004, Order, a substantial ground for difference of opinion exists as to the federal RICO enterprise issue, and a substantial ground for difference of opinion exists as to the RICO proximate cause issue. (Order of May 27, 2004, at 3-5.) The Supreme Court very well may choose to grant certiorari—particularly with respect to the federal RICO enterprise issue. If the Supreme Court ultimately issues a ruling that would result in the dismissal of Plaintiff's federal RICO claim, this Court likely would choose to decline supplemental jurisdiction over Plaintiffs' Georgia RICO claim, thus making discovery in this Court concerning Plaintiffs' claims unnecessary.[1]

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[1] The Court's general practice is to decline to exercise supplemental jurisdiction in a federal question case after the resolution of the federal claims unless circumstances exist that make exercising supplemental jurisdiction appropriate. The Court, however, does not determine at this point whether it ultimately would decline to exercise supplemental jurisdiction in this case if the Supreme Court dismisses Plaintiffs' federal RICO claim.

Given the above circumstances, the Court finds that staying discovery pending Defendant's petition for a writ of certiorari will conserve the parties' resources and the resources of the Court. The Court further concludes that even if the Supreme Court ultimately denies Defendant's petition, staying discovery for the brief period of time associated with the certiorari process will not prejudice Plaintiffs. The Court therefore grants Defendant's Motion to Stay Discovery Pending its Petition for Certiorari, and stays discovery in this case until the Supreme Court either (a) denies Defendant's petition for a writ of certiorari or (b) decides the case on the merits after granting Defendant's petition.

III. Conclusion

ACCORDINGLY, the Court *DENIES AS MOOT* Plaintiffs' Motion to Lift the Stay of Discovery [61]. The Court *GRANTS* Defendant Mohawk Industries, Inc.'s Motion to Continue the Stay of Discovery Pending its Petition for Certiorari [62]. The Court *STAYS* discovery in this case until the Supreme Court either (a) denies Defendant's petition for a writ of certiorari or (b) decides the case on the merits after granting Defendant's petition. The Court observes that Plaintiffs apparently already have served written discovery requests on Defendant, and stays the response time for those discovery requests in accordance with this Order.

IT IS SO ORDERED, this the 18th day of August, 2005.

/s/ Harold Murphy
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed Jul. 28, 2004]

No. 04–90017-B

MOHAWK INDUSTRIES, INC.,
Petitioner,

versus

SHIRLEY WILLIAMS, GAIL PELREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Respondents.

Petition for Permission to Appeal an Order from the United States District Court for the Northern District of Georgia

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Before TJOFLAT, HULL and MARCUS, *Circuit Judges*.

BY THE COURT:

The Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) is *GRANTED*.

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

[Filed May 27, 2004]

CIVIL ACTION FILE
NO. 4:04-CV-0003-HLM

SHIRLEY WILLIAMS, BONNIE JONES, AND LORA SISSON,
individually and on behalf of a class,
Plaintiffs,

v.

MOHAWK INDUSTRIES, INC.,
Defendant.

ORDER

This is a class action alleging violations of the federal and Georgia Racketeer Influenced and Corrupt Organizations Acts ("RICO"). The case is before the Court on Defendant's Motion for Amendment of the Court's Order on Defendant's Motion to Dismiss to Permit Interlocutory Appeal [46-1] and for Stay of Discovery [46-2].

On April 12, 2004, the Court denied in part and granted in part Defendant's Motion to Dismiss. (Order of Apr. 12, 2004.) The Court found *inter alia* that Plaintiffs had adequately alleged the existence of a RICO enterprise and proximate causation to survive Defendant's Motion to Dismiss. Defendant requests this Court's permission to file an interlocutory appeal as to those two conclusions and requests a stay of discovery pending the appeal. For the reasons set forth below, the Court grants Defendant's Motion.

Pursuant to 28 U.S.C.A. § 1292(b), a district court may permit an interlocutory appeal of an order. 28 U.S.C.A. § 1292(b) provides, in relevant part:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order.

28 U.S.C.A. § 1292(b). Thus, to certify an order for interlocutory review under § 1292, a district judge must find that: (1) the order involves a controlling question of law; (2) a substantial ground for difference of opinion exists with respect to the question of law; and (3) an immediate appeal from the order will materially advance the ultimate termination of the litigation. *Id.* Once the Court certifies an order for appeal under § 1292(b), and the United States Court of Appeals for the Eleventh Circuit grants leave to appeal, the entire order becomes subject to interlocutory appellate review. *City of Jacksonville v. Dept. of Navy*, 348 F.3d 1307, 1310 (11th Cir. 2003).

The Court first examines whether the April 12, 2004, Order involves controlling questions of law. § 1292(b). "A question of law may be deemed 'controlling' if its resolution is quite likely to affect the further course of the litigation, even if it is not certain to do so." *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs., Inc.*, 86 F.3d 565, 659 (7th Cir. 1996). Defendant contends that two "controlling" issues of law exist: (1) whether Plaintiffs have adequately pleaded the

existence of a RICO enterprise; and (2) whether Plaintiffs have adequately pleaded proximate causation with respect to injury to Plaintiffs' business or property. Those issues are "controlling," according to Defendant, because if Plaintiffs have not adequately pleaded the existence of a RICO enterprise or proximate causation, Plaintiffs' RICO claims necessarily fail.

The Court finds Defendant's argument persuasive, and agrees that those questions of law constitute "controlling questions" under § 1292(b) because the resolution of the question "is quite likely to affect the further course of the litigation." Consequently, the Court finds that the first of the § 1292(b) factors counsels in favor of permitting an interlocutory appeal.

The Court next addresses whether substantial ground for difference of opinion exist as to the Court's conclusions in its Order of April 12, 2004. Defendants rely heavily on the Seventh Circuit's opinion in *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir. 2004), in support of its argument.

As the Court explained in its April 12, 2004, Order, relatively few reported cases exist dealing with RICO claims on behalf of employees against employers for purposed hiring of illegal workers, and only one case, *Baker*, addresses the issue of pleading the existence of a RICO enterprise in such cases. *Baker*, 357 F.3d at 691. Although the Court distinguished *Baker*, the Court nevertheless recognizes that a difference of opinion exists as to what constitutes sufficient pleading of a RICO enterprise where a plaintiff asserts a RICO claim relating to hiring of illegal aliens. Moreover, the Eleventh Circuit has not spoken directly as to whether an association of recruiters and an employer is sufficient as a matter of law to constitute a RICO enterprise. The Court therefore believes that a substantial ground for difference of opinion exists as to this issue.

Similarly, the Court believes that a substantial ground for difference of opinion exists as to the issue of proximate causation. As with pleading the existence of a RICO enterprise, few courts have addressed proximate causation in a case such as the instant action. While Plaintiffs correctly note that *Baker* "bypass[ed]" the issue of causation, that it is clear from that opinion that the Seventh Circuit is skeptical that under the facts of that case, which are similar to the facts of the instant action, it is possible to allege proximate causation. *Baker*, 357 F.3d at 692.[1] The Court thus believes that a substantial difference of opinion exists as to whether Plaintiffs have adequately alleged that their injuries were the proximate cause of Defendant's alleged racketeering activity. Consequently, the Court finds that the second § 1292(b) factor counsels in favor of permitting an interlocutory appeal of the Court's April 12, 2004, Order.

Finally, the Court examines the third prong of the § 1292(b) factors—*i.e.* whether an interlocutory appeal of the Court's April 12, 2004, Order will materially advance the ultimate termination of this litigation. Clearly, if on appeal the Eleventh Circuit determines that Plaintiffs have not adequately pleaded the existence of a RICO enterprise or proximate causation, then Plaintiffs' RICO claims necessarily fail. Furthermore, such a determination would possibly abrogate the need for substantial expenditure of resources by the Court and the parties. The Court thus believes that this third prong counsels in favor of permitting an interlocutory appeal.

In sum, the Court concludes that an interlocutory appeal of the Court's April 12, 2004, Order is appropriate. The Court will stay discovery in the case pending a ruling from the Eleventh Circuit concerning the interlocutory appeal proceedings.

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[1] Indeed, the Seventh Circuit explicitly left open the question as to whether it would follow *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002).

ACCORDINGLY, the Court *GRANTS* Defendant's Motion for Amendment of the Court's Order on Defendant's Motion to Dismiss to Permit Interlocutory Appeal [46-1] and for Stay of Discovery [46-2]. The Court *AMENDS* the April 12, 2004, Order to provide that Defendant may seek interlocutory review of the April 12, 2004, Order pursuant to 28 U.S.C.A. § 1292(b). The Court *STAYS* discovery in this case until the Eleventh Circuit disposes of the interlocutory appeal. The Court notes that this stay is without prejudice as to issues regarding class certification.

IT IS SO ORDERED, this the 27th day of May, 2004.

/s/ Harold Murphy
UNITED STATES DISTRICT JUDGE

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed Aug. 8, 2005]

No. 04-13740-AA

SHIRLEY WILIAMS, GALE PELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs-Appellees,

versus

MOHAWK INDUSTRIES, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: ANDERSON, HULL and GIBSON*, *Circuit Judges*.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

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* Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.